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MARITIME REFORM

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Maritime Reform, Serial No. 103-116...

SUBCOMMITTEE ON
COAST GUARD AND NAVIGATION
OF THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

**MARITIME REGULATORY REFORM TO HELP THE NA-
TION'S MARITIME INDUSTRY AND TO HAVE UNI-
FORM INTERNATIONAL STANDARDS**

AUGUST 11, 1994

Serial No. 103-116

Printed for the use of the Committee on Merchant Marine and Fisheries



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MARITIME REFORM

THURSDAY, AUGUST 11, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:37 a.m., in room 1334, Longworth House Office Building, Hon. W. J. (Billy) Tauzin (Chairman of the Subcommittee) presiding.

Present: Representatives Tauzin, Hughes, Stupak, Pickett, Hochbrueckner, Taylor, Coble, Bateman, and Fowler.

Staff Present: Subcommittee—Elizabeth Megginson, Staff Director/Counsel; Catherine Tucker, Legislative Clerk, James Adams, Professional Staff; Sharon Donald, Coast Guard Fellow; Full Committee—Sue Waldron, Press Assistant; Scott Rainey, Professional Staff; Joan Bondareff, Senior Counsel; Lee Crockett, Professional Staff; Minority—Cyndy Wilkinson, Chief Counsel; Ed Lee, Professional Staff; Rebecca Dye, Counsel; and Margherita Woods, Staff Assistant.

STATEMENT OF HON. W.J. (BILLY) TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA, AND CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. TAUZIN. The hearing will please come to order. We meet this morning to receive testimony on the maritime regulatory reform legislative proposal that was developed by the Coast Guard in cooperation with various members of the maritime community.

The proposal has the potential to help reinvigorate this Nation's maritime industry, while making the Coast Guard's regulations more efficient and more effective. A very laudable goal. I want to thank each member of the regulatory reform working group, many of whom are in the panel and audience today for their hard work.

Yesterday, Secretary Peña confirmed the importance of your efforts by requesting the introduction of the Maritime Regulatory Reform Act of 1994. A copy of the Secretary's letter to the Speaker is included in each of the Members' packages. The Secretary placed this proposal on the fast track to ensure that it would be considered by the Subcommittee today. Secretary Peña's action is evidence of his commitment to reinventing the way the Federal Government does business.

[The letter from Secretary Peña to the Speaker may be found at end of hearing.]

Mr. TAUZIN. Before we hear testimony, I want to remind everyone that the hearing record will remain open for those members of

the maritime industry who would like to submit testimony for the record. This hearing is an invitation to those who are interested in regulatory reform, but have not been members of the Coast Guard's working group, to get involved in this reform process, and we would encourage and indeed invite analysis, suggestions, offers of new ideas, or any such information that anyone who is not part of the working group would like to submit.

I can assure that you those submissions will receive our very prompt attention and will be considered in the work this Subcommittee does in consideration of this important regulatory reform effort. I want to now recognize the Subcommittee's Ranking Member, Mr. Howard Coble for his opening remarks.

Howard.

STATEMENT OF HON. HOWARD COBLE, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. COBLE. Thank you, Mr. Chairman. I will be brief. I appreciate your having called this hearing, Mr. Chairman, in a possible breakthrough in our efforts to reform the U.S. Coast Guard's vessel construction standards.

I understand that the Coast Guard has agreed to legislative changes to their equipment approval and vessel inspection statutes which would allow U.S. flag liner operators to maintain and expand the number of vessels which operate under the United States flag. I hope that these changes in the Coast Guard's U.S. flag merchant's vessel regulations will eventually translate into an increasing number of U.S. merchant vessels being constructed in United States shipyards.

I want to commend as well the Coast Guard for having diligently worked with the U.S. flag liner industry to help resolve longstanding barriers to create an internationally competitive U.S. flag liner fleet.

I believe that we should channel the momentum created with the dramatic House passage of our Committee's maritime reform initiatives to quickly enact the basics of this proposal to eliminate unnecessary Coast Guard vessel requirements. When taken together, these reforms should allow the U.S. Merchant Marine to prosper.

I look forward to hearing from our witnesses about the details of this important agreement, Mr. Chairman, and I thank you again.

Mr. TAUZIN. Thank you, Mr. Coble. Again, not only for your opening statement, but for the extraordinary cooperation we always receive and the bipartisan spirit in which we work.

Any other Members wish to make opening statements?

[The statement of Jack Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, in 1992, Secretary of Transportation Andrew Card directed the Coast Guard to simplify U.S. ship construction requirements to reduce the regulatory burden on the U.S. maritime industry. Since then, the Coast Guard has been working with industry representatives to streamline shipbuilding requirements to allow the U.S. maritime industry to become more competitive internationally. The industry proposal on maritime regulatory reform that will be discussed at today's

hearing represents a significant investment of time and energy by the maritime representatives and Coast Guard officials who negotiated the proposal.

Presently, U.S. shipbuilding regulations contain many unnecessary and outdated requirements. U.S. shipyards and vessel owners argue that these requirements prevent vessels from being built in U.S. yards, and significantly raise the cost of building vessels to be documented under U.S. law. To address this problem, the industry proposal makes various statutory changes to facilitate certain regulatory changes that will be implemented by the Coast Guard.

I am pleased with the results, and strongly support those provisions that will facilitate reform of U.S. shipbuilding requirements. We should conform U.S. shipbuilding requirements to those accepted elsewhere in the world, when it makes sense to do so. Amending U.S. shipbuilding requirements will ensure that U.S. vessel owners are not required to conform to more stringent regulatory standards than their foreign competitors. It will also allow U.S. shipyards to market their shipbuilding services worldwide without the stigma of anticompetitive U.S. regulatory requirements.

Section 2 of the proposal authorizes the Coast Guard to establish voluntary programs for international and domestic vessel operations that expand the Coast Guard's authority to regulate shore-based management. The companies that participate in the programs would have additional flexibility in complying with Coast Guard regulations. While I have no specific objections to this section, I am concerned because not all of the parties affected by this section have been involved in the negotiations of this proposal. In my judgment, it is more important for us to move forward with essential parts of this proposal and develop the remainder, especially section 2, during the next Congress.

I commend those dedicated individuals who worked hard to develop this proposal. I hope that we can put the finishing touches on this legislation in time to attach it as a Floor amendment to the 1994 Coast Guard Authorization bill.

Thank you, Mr. Chairman.

Mr. TAUZIN. Now we are pleased to introduce our first panel and heading up that panel is an old friend of this Committee and the Chairman personally, Rear Admiral James Card, who has recently been sentenced to a tour duty here in Washington, removed from a very wonderful community in Louisiana known as New Orleans, and we want to welcome you, Admiral Card, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, joined by Mr. Eugene Pentimonti, Vice President, Government Services, American President Lines, Ltd.; Frank Iarossi, Chairman, American Bureau of Shipping; Kristina L. Goldfield, Executive Director of U.S. Marine Safety Association; and Ms. Sally Ann Lentz, Co-Director and General Counsel for Ocean Advocates.

We want to welcome you all to the panel. Your written statements by unanimous consent are a part of the record. We like to conduct our business a lot more casual than perhaps some committees. We would appreciate if you would just kind of talk to us, give us an oral summary of what your message is in your written statements so that we can get to questions and get a good discussion going of your perspective on this reform measure.

We will start the process by welcoming again Admiral Card, and Admiral, we indeed look forward to many such meetings with you in your new assignment and welcome you here and appreciate a summary of your testimony today, sir.

STATEMENT OF REAR ADMIRAL JAMES C. CARD, CHIEF, OFFICE OF MARINE SAFETY, SECURITY, AND ENVIRONMENTAL PROTECTION, UNITED STATES COAST GUARD

Admiral CARD. Thank you very much, Mr. Chairman. Thank you for your kind words. It was tough leaving Louisiana, as you can imagine, but I am enjoying my new job here as well, thank you.

Mr. TAUZIN. I remember knocking on doors, begging for the same privilege.

Admiral CARD. Mr. Chairman, I am pleased to address the Subcommittee today to provide an update on our maritime reform efforts. From previous testimony from Vice Admiral Henn, you know that we have been working side by side with the marine industry to develop new ways of doing business, which we hope will create win-win situations for all concerned.

Our major focus has been on developing optional compliance methods for owners of U.S. flag vessels so they can demonstrate that they meet the maritime safety laws and regulations. These efforts are moving ahead smoothly and some of them were able to go forward under the existing legislation that we have, but for others to move ahead, we need to have new authority, new legislation in Title 46.

As you mentioned, Secretary Peña has forwarded a proposal to you that will help us do that. This proposal has been developed in concert with the industry. They also had a proposal. They are very, very similar. We worked together on those, and the main concept in these proposals will help to recognize companies' quality management programs so that we can streamline the inspection process.

We believe these will reduce regulatory burdens, and we hope that makes the American Merchant Marine more competitive. Like I said, the programs will reduce redundant tests and inspections. We now have a way of more streamlined acceptance of foreign materials and equipment which meet the international safety standards of SOLAS. We will, for U.S.-flag vessels which trade with foreign nations, include a provision to accept a new code, which we will talk more about in a second.

It will give the Coast Guard the authority to rely on reports of third parties. We already have that, but this will clarify that. Ship-owners and operators are provided with an incentive to adopt alternative inspection programs accompanied by active Coast Guard oversight.

We believe that these initiatives, taken together with the regulation reforms that we are doing, will strengthen our U.S. Merchant Marine industry. We will have and maintain strong oversight programs to make sure that all U.S. laws and regulations are met, international laws and regulations both for safety and for pollution prevention.

I would like to be able now to comment a little bit on the particulars of the legislation. The first piece will allow us to implement the International Safety Management Code for safe operation of ships and for pollution prevention. This is a key provision in the proposed legislation. It gives the U.S. the authority to implement this code which has been more than seven years in development at the International Maritime Organization, and basically the Code is internationally agreed upon guidelines which are based on quality principles which recognize the importance of shoreside management in ship safety.

This is a major step forward, I believe, for the whole of the safety net for our country and for all international shipping. The Code addresses human factors by helping to formalize this procedure. It

has been incorporated in a new Chapter 9 of SOLAS. We need the legislation to be able to make that part of our code. If we don't get this legislation, we can't take advantage of that international code which has been developed.

Another provision of this part of the law would allow us to recognize quality companies' safety management schemes, and we have tried some pilot projects of this around the country, one down in your district, Mr. Chairman, when I was a district commander, with the Offshore Marine Services Association and several of their members. We called it the Streamlined Inspection Program and it basically recognized a company's commitment in applying new quality concepts like those that may be found in ISO 9000, but where we could streamline that process, it was faster and easier for the companies to meet the regulations; it took them less time, and it took us less time. In effect, we ended up with a higher level of safety in the vessels by using these programs. So this part of the legislation would allow us to do that.

The second part will give us broader authority to accept reports, documents, and certificates in evaluating safety compliance. This has already been a longstanding practice in the Coast Guard. We accept reports from the American Bureau of Shipping, the National Cargo Bureau, and professional engineers.

This really formalizes that and will allow us to do that. By doing so, we will be able to eliminate redundant tests and inspections, provide some one-stop shopping, and it gives us a smoother interface with the customer.

The third provision will allow us to accept foreign government approvals of fire and lifesaving equipment for compliance with SOLAS. Currently we don't have any authority to do this. We can do it on a case-by-case basis by determining equivalency, but it is time and resource intensive, and it is frustrating both for the people who are trying to do it and for the Coast Guard who is doing it.

This enables us to remove that duplicative test and inspection process. We believe it will level the playing field for manufacturers, and it will allow us to accept foreign government approvals meeting SOLAS. However, it will allow us also to make sure that we provide for the safety necessary for these pieces of equipment if we have higher standards, which we think is very important. So that is built into the law and we need that flexibility as well.

It will give us the opportunity to harmonize our inspection frequencies with the international requirements. Right now SOLAS for certain vessels requires a five-year inspection with one-year annual surveys. Right now we require a two-year inspection. We propose to go to the international and the classification society intervals for inspection.

Vessel inspection frequency will not be resolved, but it will help improve the paperwork flow. For instance, if we require a two-year certificate of inspection, the vessel can't operate the day after that certificate has expired. If we go to five years, we have a window of time for the intermediate examinations allowing us to provide flexibility for checking the vessels. It will not affect the existing requirements for hull examinations which involve dry docking.

It does allow us to accept classification society reports, documents, and certificates for evidence of compliance with certain safety requirements. This will expand that authority. Right now, we can do that with the American Bureau of Shipping and a similar U.S. classification society. The proposed legislation opens this to qualified classification societies from around the world, and we will develop regulations to indicate what those qualifications mean.

While it is not a part of our text, the industry proposal contains a provision for reciprocity, and we have no objection to this, and we think reciprocity will level the playing field and allow our U.S. classification society equal access with those in other countries. We would like to work with the Committee to make sure that this can be a part of the proposal as well.

In summary, the proposed legislation is important. We believe it reflects an industry consensus on these meaningful changes we have talked about. It will allow the Coast Guard to implement international convention provisions that will soon become mandatory. It will harmonize our requirements with international requirements, and I believe it supports the whole of the maritime regulatory reform initiatives which we have worked with the industry to develop.

Thank you, Mr. Chairman, and, when it is appropriate, I will be glad to answer your questions.

Mr. TAUZIN. Thank you very much, Admiral. We are indeed as excited as you as to some of these possibilities. We will want to examine some of the potential effects of some of these changes when we get to Q and A.

[The statement of Rear Admiral James C. Card may be found at end of hearing.]

STATEMENT OF EUGENE K. PENTIMONTI, VICE PRESIDENT FOR GOVERNMENT SERVICES, AMERICAN PRESIDENT LINES, Ltd.

Mr. TAUZIN. I want to now welcome Gene Pentimonti, who is Vice President of American President Lines, Ltd. who is testifying on behalf of American President and American Institute of Merchant Shipping and other shipowners.

Mr. Pentimonti.

Mr. PENTIMONTI. Thank you, Mr. Chairman and Members of the Subcommittee. I am pleased to be here today and to report to you our findings and understandings of this Maritime Regulatory Reform Act of 1994.

My testimony will focus on this act as drafted by the industry working group. Our draft, which is attached to my testimony, is equivalent in scope and organization to the Committee's draft bill, and we look forward to working with the Committee staff on the final draft of a maritime regulatory reform bill.

For nearly three years now, APL and Sea-Land and other shipowners have been working on eliminating costly, unnecessary regulatory requirements because they are one of the major cost elements that provide a cost disadvantage for building and operating ships under the U.S. flag.

We have found that many regulatory requirements can be eliminated or modified with no decrease in safety, but with a significant

reduction in the cost of our operation. Our efforts over the past three years have been guided by a simple and we believe correct principle that safety should be on a level playing field. The same standards should apply to all ships entering U.S. waters, whether they fly a U.S. flag or a foreign flag.

International standards provide an equivalent level of safety to U.S. standards and they should be accepted. Wherever U.S. standards are outdated or inefficient, they should be modified. If changes are needed to provide an additional margin of safety over and above existing international requirements, they should be advanced in international maritime organizations for adoption by all countries.

I am very pleased to say, Mr. Chairman, that we have made significant progress toward this goal over the last year, and especially since the last hearing before this Subcommittee, and I would like it thank you and all the Members for providing the leadership necessary for that task. I would express our appreciation as well for the valuable support that Secretary Peña has provided to the effort to identify and eliminate regulations that impede U.S. shipbuilding and operating competitiveness.

The industry's legislative proposal, which again is the same in concept and scope as committee draft, is an important component of a number of steps being taken to reduce regulatory burdens for the U.S. flag fleet and to create a level playing field for safety.

Two fundamental building blocks of the level playing field are reflected in this proposal. The first building block is that a level playing field requires consistent application of consistent standards. The potential for more consistent application of standards is included in Section 7 of this proposal bill.

Section 7 authorizes the U.S. Coast Guard to use other classification societies in addition to the American Bureau of Shipping to supervise the design, construction, and inspection of U.S. flag vessels if, as a matter of equity, there is reciprocity for ABS in foreign countries.

This legislative change, along with some administrative changes also being implemented to strengthen the Coast Guard reliance on and oversight of classification societies, eliminates the current costly and inefficient duplication of inspection, testing and review, performed both by ABS and the Coast Guard, and it also offers shipowners more operating flexibility in its choice of classification society.

ABS and other classification societies perform such functions for other well-respected national fleets. Allowing them to perform the same function for the U.S. flag vessels, subject to Coast Guard oversight, can reduce significant costs for American shipowners and result in a more consistent approach to safety enforcement among U.S. and foreign vessels.

But to achieve an international level playing field, a more consistent approach to enforcement must be coupled with more consistent standards. The Coast Guard is taking a number of steps administratively to make the U.S. requirements more consistent with international requirements, and we are very supportive and appreciative for the Coast Guard's efforts.

Sometimes, however, legislative changes are required. For example, Section 5 of our proposed legislation eliminates a discrepancy between U.S. and classification society inspection by changing the length of term of a U.S. certificate to five years. This simple change, which will—in no way reduces the number of annual, mid-term, and special surveys or inspections, will eliminate costly administrative and duplicative inspection costs for shipowners.

The second basic building block for a level playing field is equal access to material and equipment found to meet internationally acceptable safety standards.

Section 4 of our proposed bill would allow U.S. vessel owners to use foreign-manufactured materials and equipment found by the Secretary to be subject to similar acceptable design and testing standards. If a foreign vessel operating can go to his local marine Hechinger's and purchase a fire extinguisher, install it in his vessel, and have that fire extinguisher accepted as safe when the vessel enters the U.S. port, U.S. owners should be permitted to use that same fire extinguisher as well.

Under current statutory requirements, that extinguisher cannot be used unless it goes through separate Coast Guard testing procedures and/or unless the vessel owner undertakes a very time consuming and expensive process to prove that that extinguisher is equivalent to the Coast Guard requirements. The equipment and materials found to be safe internationally should be available for use by all shipowners, whether American or foreign.

Other sections of our bill address issues related to the Coast Guard's regulatory reform efforts. For example, Section 2 would give the Coast Guard more flexibility in designing regulatory enforcement alternatives. Some vessel owners have asked the Coast Guard for the opportunity to achieve regulatory goals in a more flexible manner in order to achieve operational efficiencies.

If the Coast Guard determines that an equivalent level of safety would be provided through a more flexible approach, such flexibility should be allowed through a voluntary compliance program. This section of the bill would allow the Coast Guard to pursue the concept of a modeled company program.

This concept, which the Coast Guard has supported for a number of years, is one in which several vessel owners have expressed an interest because it would offer the potential for more operational efficiency and cost savings.

Mr. TAUZIN. Excuse me, Mr. Pentimonti. Could you kind of wrap it up for us? We try to work under a five-minute rule if we can.

Mr. PENTIMONTI. Surely. This Section 2, Mr. Chairman, is one which we find is needed by the Coast Guard to have leverage in their implementation of the ISM code requirement; and we feel that it is important so that they can also regulate a number of foreign vessels, 96 percent of which foreign commerce is brought into this country, with that same ISM code.

Mr. Chairman, we deeply appreciate the opportunity to appear before you today and reaffirm our need for regulatory reform. We recognize that it is late in the legislative process for processing new legislation, but we believe that this legislation is critically important and we cannot and should not delay it.

The U.S. flag needs to compete with foreign flag fleets and we believe this legislation will help us achieve that goal as we maintain high safety standards.

Thank you and we are prepared to answer any questions that you may have.

Mr. TAUZIN. Thank you very much, Gene. You would be surprised how fast we can work when there is broad agreement. See if we can have this.

[The statement of Eugene K. Pentimonti may be found at end of hearing.]

STATEMENT OF FRANK J. IAROSSI, CHAIRMAN, AMERICAN BUREAU OF SHIPPING

Mr. TAUZIN. Pleased now to welcome Mr. Frank Iarossi, the Chairman of the American Bureau of Shipping.

Mr. Iarossi.

Mr. IAROSSI. Thank you, Mr. Chairman and Members of the Committee. We appreciate the opportunity to present our views on maritime regulatory reform, and we commend the Chairman and the Members of the Committee for their initiative in regard to this particular subject.

ABS is a nonprofit corporation recognized by the Congress as the official United States ship classification society.

The ABS was founded in 1862 to help develop the Merchant Marine of the United States. In 1920, ABS was appointed by the Congress as the agency to be recognized by the Federal Government for classification of U.S. owned, U.S. Government-owned vessels. Our unique statutory relationship with the U.S. Government now approaches its 75th year.

The particular focus of my testimony in this hearing is the proposed amendment to 46 USC 3316, United States Classification Societies. This amendment is part of the industry consensus package.

The United States Coast Guard has previously delegated to ABS certain technical survey and certification functions. This recognition is comparable to the recognition many foreign governments have given to the classification society's domicile within their respective countries.

Traditionally, classification societies have been an extension of their respective national governments, as well as their home domicile shipbuilding and ship-operating industries. But the world is changing and ABS recognizes this.

Essentially the proposed amendment would allow certain delegations of authority to qualify foreign classification societies whose home countries give equal reciprocity to ABS. ABS supports improvement in the United States shipbuilding standards and believes in the spirit of greater international cooperation.

Accordingly, we feel other qualified classification societies should be free to promote their services in the United States and should be eligible for delegation of certain statutory authorizations from the U.S. Coast Guard, provided ABS is afforded both equal access to the other society's home country markets and equivalent reciprocal recognition by the other society's home governments, but we believe that reciprocity must be spelled out in the statute.

We are all well aware of general notions of reciprocity which have not worked in international regulations because details have not been spelled out in the law. And ABS believes in this case we need to spell out reciprocity.

You may be aware that the member nations of the European Union recently issued a working document which is expected to be adopted later this year. This document contains provisions addressing recognition and delegation of authority by Union members' governments, the classification societies headquartered in the European Union.

However, it indicates that Union member states may decline to delegate authority to qualified classification societies headquartered in other union member states until 1998, and even allows for possible extensions beyond that.

So we are concerned that delegation from the European side may be put off into the future. This draft directive also states that a Union member government may request reciprocal recognition for the qualified classification societies headquartered in the European Union prior to granting recognition to a classification society such as ABS which is headquartered outside the Union.

Finally, the draft directive only applies to ocean vessels subject to the international conventions and engaged in international trade. The European Union document does not address cabotage vessels or those engaged in domestic inland trade, nor does it include government-owned or government-subsidized vessels, even with respect to the delegation of authority to the class societies headquartered in other Union countries, let alone outside organizations such as ABS.

Thus, to achieve true reciprocity in line with the European Union's draft directive, the USA should consider delegating authority to European Union based societies only for U.S. flag vessels engaged in international trade subject to the international conventions, and only provided the European Union governments of those societies all delegate comparable authority to ABS and at the same time.

In conclusion, Mr. Chairman, ABS supports this measure. It believes that U.S. law should be clear and that delegations to non-U.S. classification societies should be consistent with the delegation that foreign governments are prepared to give ABS with respect to the scope of the delegation, the types and the trades of the vessels covered, and the timing of the delegation.

We in ABS fully support the rationalization of shipbuilding and ship-operating regulations, and we are prepared to answer your questions, Mr. Chairman, particularly as it relates to ISM which you have not commented on up to this point.

Thank you.

Mr. TAUZIN. Thank you very much, Frank.

[The statement of Frank J. Iarossi may be found at end of hearing.]

STATEMENT OF KRISTINA L. GOLDFIELD, EXECUTIVE DIRECTOR, U.S. MARINE SAFETY ASSOCIATION

Mr. TAUZIN. We are now pleased to welcome Miss Kristina Goldfield, Executive Director of the U.S. Marine Safety Association.

Ms. Goldfield, if you will please present your testimony.

Ms. GOLDFIELD. Thank you, Mr. Chairman and Members of the Subcommittee. As you stated, I am the Executive Director of the United States Marine Safety Association, the national trade association representing marine safety equipment manufacturers, safety service providers, and safety training organizations. My prepared statement today is presented on behalf of the 150 member companies of the USMSA.

When we appeared before the Subcommittee on June 22 of this year, we were concerned that proposed changes to 46 U.S.C. 3306(b) could arbitrarily lower some lifesaving equipment standards on U.S. flag vessels. The Safety of Life at Sea Convention guidelines are minimums acceptable to the Convention's signatories. Because of lessons learned in casualty investigations over the last 100 years, the United States and some other nations have standards and regulations that exceed the minimal guidelines of SOLAS.

In some instances, the SOLAS convention is silent. Inflatable life raft fabrics are an example where there are no SOLAS or other international standards. For 30 years, domestic manufacturers built inflatable life rafts with fabric manufactured in accordance to Military Specification. The Coast Guard had a difficult time determining equivalences for innovative materials produced both here and abroad. Three years ago the USMSA and the Coast Guard developed a performance standard for determining fabric equivalency. These deliberations included USMSA members from Denmark, France, and the United Kingdom. We want high standards such as these to remain the benchmark for lifesaving equipment on U.S. flag vessels. We also support Coast Guard initiatives to raise safety standards for all flag states and are willing to work with them to ensure that the global seas are a safer place.

There are other instances where standards have differences but no distinction. These differences may impede the approval process for foreign manufacturers in this country. Domestic manufacturers are also often inhibited in their ability to obtain foreign approvals because of arbitrary standards. We do not support arbitrary standards that protect only one nation's business. We do, however, strongly support higher standards to protect seafarers.

Since our last appearance before this Subcommittee, we have had many discussions with the Coast Guard and representatives of U.S. flag liner operators. We all have a better understanding of each other's concerns. It is understandable that U.S. shipping interests wish to operate on a level playing field. This is also our desire, however, the final results of this initiative cannot sacrifice the reliability of critical abandoned ship survival equipment. The safety of U.S. flag vessels, U.S. merchant mariners, and passengers embarked at U.S. ports cannot be degraded for economic gain.

Our initial concerns were directed toward the lack of acceptance of meaningful higher domestic standards, the lack of true and meaningful reciprocity for domestic manufacturers by foreign administrators, and compromises for foreign equipment while U.S. mandates remained on domestic equipment. These remain our concerns.

In Semi-Paratus, the 1981 oversight report of the Coast Guard, the Committee on Merchant Marine and Fisheries wrote, and I quote,

"It should be remembered that the responsibilities now handled by the Coast Guard were assumed for a reason. The Coast Guard in most instances accepts duties which Congress at some point believed were being performed inadequately or inefficiently either by the private sector or by some other agency of the Federal or State government. If a particular problem is not perceived as serious today, it may be a tribute to, rather than a criticism of, the Coast Guard's regulatory role. Congress should not dismantle a regulatory system which one maritime disaster later will—in response to a public outcry—have to be reassembled."

We feel that the statutory language and the legislative history as submitted is acceptable to the parties involved and will not be viewed as an arbitrarily dismantling of safety standards, as long as it is the intent of the Secretary, the U.S. Coast Guard, and Congress to uphold the true spirit of this language. This concludes our prepared statement and I would be happy to answer questions when appropriate.

Mr. TAUZIN. Thank you, Ms. Goldfield.

[The statement of Kristina L. Goldfield may be found at end of hearing.]

Mr. TAUZIN. We had a speaker in the Louisiana house who once admonished us in a prayer before a session that he prayed that our words would be sweet that day, for tomorrow we might have to eat them. Your admonition is well received.

We are now pleased to welcome Ms. Sally Ann Lentz, the Co-Director and General Counsel of Ocean Advocates. Ms. Lentz.

STATEMENT OF SALLY ANN LENTZ, CO-DIRECTOR AND GENERAL COUNSEL, OCEAN ADVOCATES

Ms. LENTZ. Thank you, Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to testify this morning on the Maritime Regulatory Reform Act of 1994 on behalf of Ocean Advocates and the Coast Alliance.

One of our primary concerns is protection of ocean and coastal resources. For this reason, we strongly support those provisions of the act which facilitate implementation of the ISM code. Mandatory application of the code requires all ship operators and owners to embrace the culture of safety and institute a comprehensive safety management system to ensure coordination and consistency throughout the organization. In this way, the code fills a critical gap in regulation of the shipping industry by providing what is essentially a licensing system for ship operators. It directly addresses an important aspect of the somewhat elusive human factor by providing a system for enhancing both shore-based and shipboard operations and the relationship between the two.

The safety management system must include, among other things, an environmental protection policy and instructions and procedures to insure safe operation of ships and protection of the environment in compliance with relevant international and flag state legislation.

In addition, code provisions requiring identification of weaknesses in vessel systems and active efforts to prevent failure of those weak points by including preventive measures in the ship's operational maintenance routine, along with internal safety audits, should contribute significantly to overall ship safety and consequently pollution prevention.

While we believe an earlier date for application of the code on a mandatory basis is both warranted and achievable, we recognize the difficulty of requiring compliance before the standard is applied worldwide. The act will at least encourage voluntary compliance at an earlier date.

In our written testimony, we recommend some amendments which would expedite and broaden the scope of ISM compliance to other sizes and types of ships. We are concerned, however, about the structure of the proposed legislation which appears to link implementation of the code with amendments to other regulatory requirements.

We believe these are two separate, although not unrelated, initiatives and the legislative language must clearly distinguish the two. Specifically in Subsection 2103(a), subparagraph a, it must be clearly understood that the voluntary alternative compliance programs refer to other requirements of this subtitle and not to implementation of the ISM code.

The section by section analysis appears to suggest that a model company program could substitute for compliance with the code. We strongly object to such a proposal. A model company program might contribute to compliance, but it should not be accepted as a substitute for compliance.

It is also suggested that compliance with the code would authorize the Coast Guard to reduce existing regulatory requirements. We believe acceptance of alternative compliance options should be considered separate and apart from compliance with the code. The legislative language must be amended to better reflect this intent.

Industry has proposed a delay for as long as one year of promulgation of regulations pending submission of a report to Congress on the implementation and enforcement of the ISM code. While such a study has merit, we object to the delay, especially with respect to regulations for voluntary compliance. Those companies that wish to comply on a voluntary basis prior to July 1998 should have the benefit of Coast Guard guidance.

We are pleased to see the language in the Coast Guard bill under Subsection 2103(a), Subsection b. We emphasize that the regulatory requirements that currently exist should be strictly adhered to, unless a ship owner or operator can demonstrate positively that its proposed alternative provides safety and pollution prevention equivalent to or in excess of what is currently required. We believe the Coast Guard language in that provision reflects this intent.

As regards the provision on equipment approval in Section 4, we recognize the desire of the Coast Guard and industry to avoid expensive and duplicative testing procedures. However, all equipment and materials approved by the U.S. should be judged by the same performance standard.

The issue should be whether equipment and materials perform in a fashion which provides safety equal to or in excess of what is

required under U.S. law, rather than whether the design and testing standards meet the SOLAS requirements.

While subparagraph 3 of the proposed legislation may be intended to address this concern, it falls short of requiring a minimum level of safety as exists in U.S. law. We understand that extending the time for inspections from two years to five years will extend the validity of the certificate of inspection from two to five years, but will not effectively alter the frequency of inspection. Ships will continue to be examined on an annual basis.

We are concerned, however, that because the scope of the annual examination may be less extensive than an inspection for purposes of certification, that in effect the overall verification process for ship compliance may be somewhat diminished. The act should provide some assurance that the scope of the annual examination will be augmented to ensure adequate verification of compliance.

Finally, proposed Section 3316(a) allows the Secretary to delegate authority to ABS or other recognized classification societies. The Secretary should be provided more specific guidance on what constitutes a recognized society.

We recommend that recognized classification societies be further defined in the act as those which, at minimum, comply with recently adopted IMO guidelines for delegation of authority to such organizations.

In conclusion, greater care must be taken in drafting the proposed legislation to ensure proper guidance to the Secretary in exercising discretion, and to ensure that efforts to provide for greater flexibility in compliance with the current regulatory regime does not jeopardize safety or pollution prevention concerns. Some revision of the current legislative language is necessary to provide such assurance.

Thank you, sir.

Mr. TAUZIN. Thank you very much, Ms. Lentz.

[The statement of Sally Ann Lentz may be found at end of hearing.]

[The statements of Passenger Vessel Association, Hopeman Brothers, Inc., Lloyd's Register of Shipping, and Shipbuilders Council of America may be found at end of hearing.]

Mr. TAUZIN. Admiral, we have heard from the passenger vessel industry. They have some apprehension about the prospect of classification societies being delegated additional responsibilities which might eventually lead to their vessels being subjected to IMO requirements.

Is that a possibility under this legislative proposal?

Admiral CARD. Mr. Chairman, those provisions that we have give us authorization to do that, but they don't require it, and it is not our intention, first of all, to require the passenger vessel community, the people that you are talking about, to be classed if they don't desire to be classed or to join into, if you will, a compliance scheme using the ABS, if that is not their desire.

It also is not our intention to have them be in compliance with the International Ship Management Code or those international provisions unless they are, in fact, on an international route. I think we have 5,000 passenger vessels we give certificates of inspection to and 50 are for international routes.

Those 50 vessels which are on those international routes are ones which carry more than 12 passengers and would need to have the ISM code application at some point. But for the other 4,000 plus, it is not our intention to force them to comply, unless they desire to be involved in compliance in some way. So this gives us lots of flexibility. It doesn't require us to, but it allows us to provide those kind of schemes. And we have some model company programs going on with some of their members right now.

Mr. TAUZIN. Would you comment on the recommendations for improvements in the draft recommended by Mr. Pentimonti and Ms. Goldfield regarding true reciprocity, both in the classification societies and in the way in which equipment is regarded?

Admiral CARD. Mr. Chairman, first in the classification societies, we understand the concept of that and we agree with the concept and the language in the law. We think we have to figure out how we would make that work. But locally, certainly the International Maritime Organization just put forth an Assembly resolution which put forth standards for classification societies, and whether it be a part of the law or a part of our implementing regulations, that would be taken into account. We would have that as being one of the cornerstones of what we would use as recognizing the classification society.

So I think we accept the concept as being a portion of that, whether it needed to be in the legislation or not. We think we could make it happen in regulations.

Mr. TAUZIN. How long for standards of equipment?

Admiral CARD. As for standards, it is our goal to make this process where there is already an equivalent level of safety designed into the systems that are there; that there be certain kinds of materials or, perhaps, in lifeboat manufacture, people should be able to accept and use those standards.

If, for some reason, in our own regulations we have standards which we think are more important, which was mentioned in regard to the fabric for life rafts, we would want to make sure that those standards are met.

But in addition to that, there will be an international working group. Many of those issues, for which we have really been a driving force, will help level that playing field so that the international standards and our standards will not be very much different. That is our goal and that is our hope.

So we will pay attention to those cases where we need to have the higher level of safety for certain pieces of equipment and that is, we believe, also reflected adequately in the bill.

Mr. TAUZIN. The cover letter from the Department of Transportation indicates that the authorization would allow the Coast Guard to accept different means of assuring safety and additional government inspection for compliance with these regulations, however, it does not authorize accepting lesser standards.

You heard several concerns expressed today, Ms. Lentz in particular, about making sure the language of the bill does, in fact, provide an equivalent level of safety and an equivalent level of assurance and pollution control.

I have looked at—you know, the draft and there doesn't appear to be statements to that throughout the draft, such as providing an

equivalent level of safety is maintained under Section 2103, allows the Coast Guard under that Subsection 3103, may be relied upon in regard to maritime safety, security, and environmental protection.

There are words, preserve higher levels of safety as meeting acceptable standards. They seem to be—there seems to be an attempt to do that. But if I can quickly turn to Ms. Lentz, are you telling us there is not enough of a statement in the bill to make sure that current safety and pollution prevention concerns aren't going to be adequately protected with these new flexibilities?

Ms. LENTZ. I find some of the language rather discretionary. For example, in Section 3306(b) with respect to equipment approval, the provision refers to giving due regard to whether adherence to standards promulgated by regulation under this subsection is necessary in order to preserve higher levels of safety. Simply giving due regard is not the same as insuring that there is a minimum level of safety adhered to.

Mr. TAUZIN. OK. Admiral, you want to respond to that?

Admiral CARD. Mr. Chairman, first let me respond in the greater sense. The thrust of all of the work that we are doing here is really not to lower any standards at all, but to maintain the standards, and to really streamline the process by which we ensure those standards are met, and also to recognize that shipping is international. We need to be able to recognize the international requirements, which we really have put much energy into developing.

The Coast Guard has been the leading force at the IMO—before that, IMCO—in all of the ways that we looked at pollution prevention, et cetera. So I hope that in the greater sense, what we are doing here, both with the ISM code and the model company programs and further kinds of some delegation which will allow our people to direct their resources at those more important areas, we are going to end up with greater safety and greater pollution prevention because we will be able to take advantage of new concepts that we haven't used before.

With regard to the equipment standards themselves, we want to make sure, as we look at all of the things, that we don't change what we have for safety, as we mentioned. But in many cases right now, there is only a difference in perhaps the kind of—you know, steel is steel and brass is brass, and those kind of things, and we have a very cumbersome process for allowing someone to buy, for instance, a piece of equipment somewhere else which really meets the same standards we have because we have developed them internationally.

So we want that to happen, but we don't want lower standards where it is important to have the appropriate safety standards for the survival equipment and firefighting equipment.

Mr. TAUZIN. So the intent is well expressed. Perhaps we can look at the language and make sure the intent is carried out.

Admiral CARD. We would be happy to work on that with you.

Mr. TAUZIN. Mr. Iarossi, would you like to comment on the suggested amendment by Mr. Pentimonti regarding reciprocity and classification societies?

Mr. IAROSS. Yes. I believe in my comments that the important point for ABS that there is an established standard for determining

reciprocity, and where delegations by the U.S. Coast Guard go to foreign classification societies, that there is a reciprocal opportunity for ABS to carry out the same type of—or to be afforded the same type of delegations by those home country governments.

We are quite comfortable with it provided there is a reciprocity.

Mr. TAUZIN. Have you read the amendment?

Mr. IAROSSI. Yes.

Mr. TAUZIN. You know, it literally spells out meaning unrestricted, timely, demonstrable access to the country's market for international, domestic vessels for all classification and certification-related services.

Mr. IAROSSI. Yes, and we are very comfortable with that language.

Mr. TAUZIN. How about the fact, the other recognized classification society has offices, maintains records in the U.S., demonstrates financial responsibility, meets and maintains standards for a classification society?

Mr. IAROSSI. We think those are very appropriate requirements.

Mr. TAUZIN. Ms. Lentz, you mentioned similar concerns. Would that language satisfy your concerns as well?

Ms. LENTZ. Our recommendation is to use the guidelines developed at IMO which were recently adopted as a minimum standard. We have no objection to the criteria as it has been stated, but the criteria stated in the guidelines, it is a little more specific, I believe.

Mr. IAROSSI. And, Mr. Chairman, we would also accept that basis as being very appropriate, the inclusion of the IMO standards.

Mr. TAUZIN. Ms. Goldfield—I take it, Admiral, you want to make a comment.

Admiral CARD. I was just going to say, the question was whether we need to put that in the legislation. We will develop regulations which will be available for public comment and certainly that IMO guideline will be a cornerstone of the regulation that we develop.

Mr. TAUZIN. Whether we actually spell it out in report language or—we will discuss that later.

Ms. Goldfield, you suggested similar reciprocity in maintenance of standards for equipment and all that. Have you suggested language to that effect or are you satisfied, as others might be, with the notion that report language can make it clear that that is the intent, in fact, of this legislation?

Ms. GOLDFIELD. Yes, we are satisfied that the report language can make that clear, and we have agreed with the report language that has been submitted.

Mr. TAUZIN. Thank you very much.

I now recognize the Ranking Minority Member, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Good to have you all with us this morning, I say to the panel.

Admiral, I think you have already answered this, but I want to give you a chance to reiterate it. Any time we consider altering, amending, massaging inspection standards or procedures, I think many of us synonymously trigger the fear reflex, how is it going to affect safety? And I take it from your response to the Chairman's question, you have no problem or fear that safety is going to be compromised in this exercise?

Admiral CARD. Sir, I am absolutely dedicated to the proposition that it won't be compromised. In fact, that is part of what you all hire me to do, and we will make sure that is the case.

Our goal is to streamline the process and to make it a better process all the way around. As a part of that we think, by some of the quality concepts we are talking about, we will actually improve the process and improve safety as opposed to lowering safety in any way. We are dedicated. We will not permit safety to be degraded.

Mr. COBLE. Well, that is my assurance and I wanted you to reinforce it. Admiral, will the Coast Guard—strike that.

Well, no, that is about as well as I can ask it, I guess. Will the Coast Guard have jurisdiction and will you be able to exempt model companies from requirements imposed in the Oil Pollution Act of 1990?

Admiral CARD. Sir, we don't intend to. We don't have the authority to do that. We don't want to do that. That is not what we are proposing in the legislation. That is not what this is all about, but it will allow us, for instance, to, as they are meeting those requirements, identify more than one way for us to know they meet those requirements. We might be able to accept a third party report or assessment. We might be able to accept the oversight of the American Bureau of Shipping. We might work with the company on a different scheme. So it may take us one hour to do a job that now is taking us four hours to do, but the level of safety remains the same.

Mr. COBLE. Mr. Pentimonti, do you have any idea, and perhaps you don't, but do you have any idea how much money you all at your company would realize in savings if this proposed—these proposed standards are enacted?

Mr. PENTIMONTI. We have testified earlier that the costs of these regulations are large in respect to our operations and design and acquisition of ships.

I think we testified that the cost burdens of the Coast Guard regulations over a foreign flag regulation for building a ship is as large as 4 or 5 percent of the cost of the ship. So if a ship cost \$60 or \$80 million, an efficient large container ship, you know, that could represent a large sum for the acquisition of the vessel.

We have also testified that the inspections and some of the duplications of inspections and so forth that these provisions will change, cost us large sums over the life of the vessel. I think we testified that those are in the 2 and 3 percent of the costs compared to our foreign flag competitors. So there are large sums of money that will be saved from the inefficiencies that these provisions will clean up.

Mr. COBLE. Well, should the proposal under discussion today be enacted into law, would APL be in a position to place more ships under U.S. flag, number one, and would you all consider building any vessels in U.S. shipyards?

Mr. PENTIMONTI. Well, I would like to answer that in two parts. The first part is clear that if, in fact, these regulations are enacted, that we will have the opportunity to bring vessels that we are currently constructing into the United States, given the consideration,

as you know well, that we enact other legislation recently passed out of the House that is now in the Senate.

On the second part of the question, the issue of building ships in the United States is an issue which has much more consideration regarding the market price of a vessel compared with one constructed in a U.S. shipyard.

Currently the U.S. yards have not demonstrated that they can be competitive in the world markets to build large efficient container ships; so I think this issue strongly provides other restrictions that we have to building ships in the United States.

However, surely cleaning up these regulations allow us to design and construct U.S. vessels, whether they are in U.S. yards or otherwise, with the flexibility to keep them under U.S. flag.

Mr. COBLE. Thank you, sir.

Mr. Iarossi, since I am speaking in matters of fiscal-related matters, let me ask you this question. How much business do you all at ABS expect that you may lose should U.S.-flagged vessels be allowed to use foreign classification societies?

Mr. IAROSS. Mr. Coble, I would like to be able to say we will lose no business. I think from a practical standpoint, there will be an impact on ABS, but we think it will be relatively minor, and we think, given the equal access to foreign delegations, that we will be able to offset this.

Mr. COBLE. So overall, more benefit than detriment?

Mr. IAROSS. I think the potential is slightly more positive benefit, yes.

Mr. COBLE. Thank you, sir.

Mr. Chairman, one final question. Ms. Goldfield, I believe the U.S. Marine Safety Association originally opposed the provisions which would allow U.S.-flagged vessels to use equipment and materials approved by certain foreign governments. I think the result now is that you no longer have problems with that. Talk to me a minute or two about that.

Ms. GOLDFIELD. We do not have a problem with that as long as those very important words of due regard are carefully considered. As I mentioned in my statement, we do not look for barriers. However, we want to make sure that if the United States has standards in place, that they are looked at carefully to make sure are they there for a reason, and if they are there for a reason, a safety reason, that they remain in place. If they, however, are arbitrary standards that can be removed without affecting safety, then we have absolutely no problem with those being removed, sir.

Mr. COBLE. I thank you, ladies and gentlemen, I thank you again for being with us.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you very much, Mr. Coble.

The Chair now recognizes Mr. Bateman.

Mr. BATEMAN. Thank you, Mr. Chairman, and thanks to the panel.

One of the things that being very admittedly inexperienced in what we are talking about that I need to have you clarify for me is the provisions that extend the life of the certificate relating to safety inspections. If you are going to extend the life of it, are you diminishing the assurances of safety that are involved? I read things about

you are going to extend the life of the certificate, but you are still going to have as many inspections. If that is the case, are the inspections going to be in the same nature as have been previously required, and if not, why not, and what are the pluses and the minuses?

Admiral CARD. I take it, sir, that question is for me. I will take the first cut at it anyway, if I may.

Mr. BATEMAN. I would like to have a comment from anybody who is interested.

Admiral CARD. Several years ago, I think it was in 1986 or 1987, again the International Maritime Organization undertook a proposition to be able to, you recall, standardize the inspection frequencies for ships which are subject to the international conventions. And we were a part of that, and we agreed to it. Effectively, what we plan on doing is having our inspection intervals being the same, that means every year, but right now we require a certificate of inspection every two years, with an annual survey in the middle.

At the end of that two-year period of time, there is an exact date when that certificate expires and you have to arrange to have your vessel inspected. And if it expires Friday night, you can't operate on Saturday. What this provision will do is extend that certificate to five years, which is already what happens with the international certificates that the American Bureau gives their classed vessels, and other countries are also doing that. We will then have these annual surveys. I think we will end up with the middle one of those, which would have been about the time that you had a certificate of inspection, be a higher level survey similar to what the old certificate of inspection was, and the other ones will be of the kind we are already doing. But you will have flexibility as to when you can schedule those inspections, so you won't be put out of business if you don't get the inspections done on a certain date. That really, I think, is the main advantage.

We don't expect there to be any diminution of the quality of the vessels' standards. They will be checked every year, looked at. We do that right now with tank vessels and with cargo ships. So I heard Ms. Lentz' concern. We are not going to change the standards that we are looking at. We find that this international ship management code will go hand in hand with that because it is really a continuing process.

If you only get your house ready for inspection once every two years, maybe the other times you are not ready for it. This one will allow there to be a higher level, I believe, a consistently higher level of safety, because the people both in the company and on the ship are going to be looking at that. We believe that will be the effect of the code, and that is also the effect of some of the model company programs that we have done some pilot projects with. It is a longer answer than maybe you wanted, sir, but I think they are interlinked.

Mr. BATEMAN. Let me comment and then invite any of the rest of the panel to comment.

What I hear you saying sounds like the best of all worlds kind of scenario, and I hope it is indeed the case. But I would assume that under the present regimen, if you are being inspected for purposes of obtaining or extending a certificate, that that inspection is

somewhat more rigid today than the recurring intervening inspections.

Am I correct in that assumption under today's regimen?

Admiral CARD. It can be, depending upon the quality of the ship. We use the same inspection guidelines. Right now when our inspectors go aboard a vessel, they have a book which we use for the guidelines. As you look at the vessel, at the one year or the annual survey, you look for concerns. If you find concerns, you go deeper. You are checking the same levels of things.

There are some frequencies of inspections with hydrostatic testing of boilers and those kind of things. None of that changes. That will all be the same, none of that will change. It is just that when we get all done, we issue a piece of paper. In the middle time we don't necessarily issue a new piece of paper for the vessel, although our system is computerized and it, in effect, does that anyway. But this will go for a five-year timeframe, so it will provide more flexibility.

I think really we are not changing the scope that much. Anytime we go on board, when someone is doing a survey, if there is a problem, they will look more deeply because all of those elements of the vessel are required; in addition, the Coast Guard will, on a random basis for operational purposes, be aboard vessels.

We go aboard tank vessels right now when they hook up, to transfer cargo, make sure they are hooking it up correctly, that they are not spilling oil. We look for papers for the master, for the officers, and we check the pump room to make sure it is in good shape.

There will still be the same random boardings the Coast Guard does of these vessels to check for operational concerns. Again, during that time, if there is any material condition that comes forward, then that would be checked into. So I am not concerned that we are going to be lowering the standards.

Mr. BATEMAN. Well, assume that someone puts in service a brand new vessel, that it has been inspected, it meets all criteria, it gets a certificate, it operates for five years. Assume, on the other hand, that you have got a vessel that has been in operation for 15 or 20 years, it operates under a 5-year certificate. It gets the same kind of treatment throughout the process as the brand new or the much newer vessel.

Admiral CARD. For the most part, except we do have special programs for certain vessels where we have developed a history of the vessels in our computerized system, we know that there may be one class of vessels or one type of concern, so we have some special inspection procedures for those. I think the age is taken care of based upon the history of the vessel and what we know about the vessel and how we are able to track it.

But I think the regime would be the same. What you see written in the law and the regulations for the inspection frequency would be the same, but we tailor the inspections or the American Bureau of Shipping if they were acting on our behalf, in that case tailor their surveys, based upon what they know about the history of the vessel, and we have good data to be able to take care of that.

Mr. BATEMAN. But the legislation as drafted even under the five-year certificate would give you the flexibility to conduct as many

inspections and as in-depth an inspection as was called for, and that you feel that you have the data base to be able to know when to do it or whether to do it.

Admiral CARD. I think so. In addition, there are already requirements in the law for people to report when they have problems with their vessels and to report when they have accidents. That requires all sorts of special inspections. So if you owned a ship and you had a problem with your steering, you are right now obligated to tell me that you had a problem with your steering. That will cause us to come down and pay attention to that.

Mr. BATEMAN. Does anyone else on the panel want to comment?

Ms. LENTZ. I have more of a question, I suppose, than a comment, based on what the Admiral just stated. Perhaps he can clarify this for me.

You stated a minute ago that in terms of the annual surveys that would be undertaken, that the middle one of those would have a higher level of survey, as would be for a certificate, and the others would have what is normally considered to be the level that is supplied for an annual survey, but then you said that each of the annual surveys would be treated similarly, so I am a little bit confused.

Admiral CARD. If I may respond, I think the intent of any survey on an annual basis is to look at the quality of the material of the vessel; you check the firefighting equipment, you check the life-saving equipment, you check all the operating systems. One of the things I didn't mention in this process is the hull examinations, dry-docking, if you will, which checks all the seals. It will be exactly the same as it is right now, nothing will change in that regard.

But it is my understanding that the new international regime has, and I may need some help with this, so I may need to provide something for the record after we get all done, provided in this five-year window for one of those surveys in the middle—and the folks on my left may know—to be dedicated to be more like what was the two-year inspection before. But I guess I would say that what we are finding is that we are getting more of a continuous inspection cycle on vessels. Before, we would only look at it for one short window of time, and the rest of the time, we wouldn't. That is what the ISM code is all about, that is what all the auditing things are about.

Instead of doing it once, what we are really asking people to do is do it over a continuum, so we have a continuum of safety so these annual surveys, annual inspections really will be important, but they won't be nearly as important as they used to be in relation to the overall scheme of safety. That is why the ISM code is so important, because it really takes that concept of continuous quality and makes it a better one.

I hope that answers your question and concern. If you need, we can submit a little more to the record on how the new scheme would pay attention to those inspections.

[The information follows:]

CERTIFICATE OF INSPECTION REQUIREMENTS

Under current law, tank vessels, freight vessels, mobile offshore drilling units (MODUs), offshore supply vessels (OSVs), and oceanographic research vessels are required to undergo an inspection for certification at a two-year interval. All nautical school ships, passenger vessels over 100 gross tons, and those passenger vessels under 100 gross tons which are over 65 feet in length are required to undergo an annual inspection for certification. Passenger vessels under 100 gross tons and under 65 feet in length are required to undergo an inspection for certification triennially. Upon a finding that the vessel is in compliance with applicable laws, regulations and international rules, the vessel is issued a Certification of Inspection (COI), valid for the time periods previously noted.

The scope of the inspection for certification includes an examination of the vessel's accessible hull structure and its principal systems such as lifesaving, firefighting/fire detection/structural fire protection, navigation, propulsion, cargo and pollution prevention systems and their constituent components to verify that they are in compliance with applicable laws, regulations and international rules. In addition to the material assessment, Coast Guard marine safety personnel witness drills to verify the proficiency of the vessel's crew to respond to likely shipboard emergency situations such as fires and ship abandonment.

Existing law requires that tank vessels be inspected or examined annually; other vessels on biennial or triennial cycles are examined annually as a matter of Coast Guard policy. The annual examinations are called "mid-period reinspection," and are normally carried out between the tenth and fourteenth month of the COI anniversary. The mid-period reinspection is intended to verify that the vessel is being maintained and operated in compliance with the terms of the COI. Generally, the mid-period reinspection consists of visual observation by Coast Guard marine safety personnel of the vessel's accessible hull structure and the operation of principal systems in conjunction with the crew proficiency drills. Where, based upon their visual observation of the vessel's systems or components, Coast Guard marine safety personnel have clear grounds to suspect the vessel is not in compliance with applicable requirements, they may conduct such additional tests or examinations as may be necessary to verify the vessel's fitness for its certificated route and service.

Increasing the inspection for certification interval from two years to five years will not adversely impact the safety of the affected vessels. There will be no relaxation in the requirement that the vessel must be in compliance with all applicable laws, regulations and international rules during the term of its certificate. In actuality, the interval increase provides only an administrative relaxation in that our certificates will remain valid for a longer period to bring our domestic requirements in line with prevailing international standards. While the certificate's period of validity may be longer, the existing intervals governing the periodic inspection of the vessel's various systems and components will not necessarily change. There will be four annual exams between each COI exam. It is the Coast Guard's intention and policy of IMO and the classification societies that one of these (the 2nd and 3rd) be more in depth, and therefore will closely parallel current inspection practices. This will ensure that under the new inspection scheme there is no deterioration in the level of safety currently established in our domestic fleet.

Mr. TAUZIN. If the gentleman would yield?

I think it would be a good idea, Admiral, if your point is that you are going to avoid spiffing it up because the Coast Guard is coming around this week, the inspectors are coming around, that sounds like a decent proposal, but I think outlining it might be a good idea for the record.

Mr. BATEMAN. I think it might be helpful.

Mr. IAROSI. Mr. Bateman, could I also add to that?

What the new regime on inspection does is, firstly, it allows the Coast Guard to bring its inspection program in line with the international certification programs which are on a five-year basis. It is very important to understand that going back to last July, the IMO and the international classification societies instituted what they call the Enhanced Survey Program, and what we did was we looked at our five-year cycle for inspection.

The most stringent of those inspections was in the fifth year at recertification. We took those requirements and greatly enhanced them, both in the scope of what was going to be looked at and the requirements for cleanliness of the vessel, and access in particular, to the full structure of the vessel, to make sure that that five-year certification was far more extensive than previously. Then we took, and this is where the Admiral was talking about the mid-period inspection, we took the mid-period inspection which occurs somewhere between the second and third year of this five-year cycle, and we significantly increased the requirements there so that currently that mid-period inspection has almost the same scope and rigidity as what used to be the five-year certifying inspection. And in addition to that, we have annual inspections at the intermediate anniversaries, all of which have been upgraded.

We have seen very significant results from this as far as far more adherence to compliance, and I think what the Coast Guard will do is bring its schedules for inspections in line with that international regime. In no way would I expect it to degrade the survey process.

Mr. BATEMAN. Mr. Chairman, if I could be indulged, I have two more questions.

Mr. TAUZIN. No problem.

Mr. BATEMAN. Throughout the comment has been made that the objective here is to level the playing field for American shipping interests vis-a-vis foreign or international shipping interests, and no one could conceivably object to that as a proper objective. That raises the question, number one, does the legislation as it is before us accomplish the objective? And, number two, in accomplishing the objective, does it diminish or augment the degree of safety at sea?

Give me a comfort level as to whether this draft has gotten us there.

Mr. PENTIMONTI. I would like to try to answer your question on that. I think I would like to say very strongly that we believe that the draft legislation, in fact, does level the playing field.

And as I testified, two basic reasons other than the one we have just been talking about—about synchronizing the inspections with what the classification society wants—and that is that, A, we will eliminate duplicative inspections that the ABS and Coast Guard have been applying, if, in fact, the ABS and other qualified classification societies can do the singular inspection. That is a large part of the overlap.

And then, secondly, our ability to access materials, equipment, systems, and so forth, that our foreign competitors can from the international markets of equipment and materials that meet all of the international safety requirements and can be tested and accepted as meeting those.

Those two elements form the basis, we believe, of a program that definitely does get us to a level playing field. We have worked with the Coast Guard on other regulatory issues, as was testified by the Admiral, that we feel will get us to the last mile. And we feel that the combination of this legislation and those regulatory changes that we have made are clearly going to get us to a level playing field.

Mr. BATEMAN. Your comment enhances my comfort level.

Is there any dissent from what you have said by anybody?

Ms. LENTZ. This isn't a dissent, but it is a qualification. I think that the intent as expressed here today by all the interested parties is that there is no intention to diminish safety and pollution-prevention capability. Our concern, as expressed in our written statement, is that the language of the act clearly reflect that, and not provide such a degree of discretion that it could be diminished in the future; so that is the one qualification that we have.

Mr. BATEMAN. OK.

Mr. Chairman, I don't know that I am going to be able to be here long enough to hear that testimony, but I think it is pertinent here, and I think these people would perhaps be appropriate to react to it. But I have looked through the statement of the Shipbuilders Council of America and it raises concerns with regard to whether or not what is proposed here has implications for the double hull requirements and the Oil Pollution Protection Act that we have passed. And I would like to have comments as to whether or not that is a concern, and if it is a legitimate concern, how it should be addressed.

Mr. TAUZIN. Before you comment on that, let me make it clear that the Shipbuilders Council has submitted testimony, but will not be testifying, along with Lloyd's Register and Hopeman Brothers and the Passenger Vessel Association. We have their written statements for our records, as we have invited everyone else who has an interest to do so. So, Admiral, if you will comment on Mr. Bateman's question.

Admiral CARD. Congressman, I have read that quickly. We don't interpret it that way. We don't intend for it to be that way. And nothing in this legislative proposal we think would change that, and we don't want to change that. So I am not exactly sure.

We will talk with them to see what their concern, particular concern was, but we don't believe that to be the case. That is a whole separate discussion, which you all have had and we have had. We have come to the resolution in our country as to what the answer is, and this doesn't change that from my perspective. So double hulls are going to be there, mid-deck tankers are not, and I think that is all resolved, and we don't intend for this to impact on that at all.

[The following was submitted:]

IMPLEMENTING THE ISM CODE

The concern has been expressed in some quarters that implementation of the International Safety Management (ISM) Code, which was made effective by Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS Convention), will adversely affect the pollution prevention measures instituted by the Oil Pollution Act of 1990. This concern is unfounded. The ISM Code focuses on shore-side planning and human factors. OPA 90 is broad in its approach but emphasizes, among other things, structural issues, such as double hulls for tank vessels. Nothing in the ISM Code conflicts with or will derogate from the requirements of OPA 90.

While there is no need to change the legislative language used to implement the ISM Code, it would be beneficial to add a provision to the report accompanying the legislation clarifying the intent of Congress in this regard.

Mr. BATEMAN. Well, you know, we frequently deal with the doctrine of unintended consequences here. If you would, this Member would appreciate it if you would review your language against their

concerns and get back to us as to whether we can be reinforced that you are not unintentionally affecting those requirements that are presently in the law.

I don't want to take an undue amount of time, but the Hopeman Brothers, being a good, good Virginia concern, expressed some anxiety as to whether or not foreign safety equipment will be subject to the same kind of testing and verification as to its adequacy and meeting standards. And I would like at some point to have their concerns addressed.

Admiral CARD. Sir, we were recently at a meeting with the Shipbuilders Council and Hopeman Brothers was there. We talked with them about those concerns. Effectively, they provide material and the systems for structural fire protection, if you will, fire bulkheads on vessels.

Those standards are spelled out internationally, and I think the U.S. standards and the international standards are almost identical in that regard right now, but we will pay attention to their concerns and provide something back to you.

Mr. BATEMAN. I think their concern is not so much that the standards and requirements as written may not be in alignment, but are the testing to determine whether you have complied with standards as rigorous and mutually consistent in their practical application and implementation in the real world. I think it is that aspect of it that I would like some—

Mr. TAUZIN. If the gentleman would yield?

Hopeman has indicated that, at least in their view, past experience has demonstrated that materials and items tested in foreign labs do not automatically pass the same test in American labs, and they wondered why not, and whether you are going to be careful to examine that before you accept the foreign test. I think that is precisely the problem Mr. Bateman points to.

I thank the gentleman for yielding.

Mr. BATEMAN. I thank you for helping me to clarify it.

Admiral CARD. I think that a part of the international standards that need to include the testing as well, and our goal is to make sure that they are the same as what we now see, and what we agree to internationally, so that we will pay due regard.

We will provide something for you for the record for that.

[The information follows:]

INTERNATIONAL STANDARDS FOR LIFESAVING AND FIRE PROTECTION MATERIALS AND EQUIPMENT

For many years, the Coast Guard, representing the United States at the International Maritime Organization (IMO), has worked to improve the international standards for lifesaving and fire protection materials and equipment. The statement made by Mr. Pentimonti of American President Lines to the effect that there is virtually no difference between the level of international standards and Coast Guard standards for life safety and fire protection equipment, is in effect, a declaration that these efforts have been successful. With some exceptions, as noted by Hopeman Brothers and the United States Marine Safety Association (USMSA), the international standards are generally equivalent to the U.S. requirements. We could not have said this ten years ago. In our implementing regulations, we intend to ensure that any foreign approval system we accept will include prototype evaluation and production monitoring equivalent to that required for Coast Guard approved equipment. This directly addresses the concerns expressed by Hopeman Brothers.

As far as the remaining differences between U.S. and international life safety and fire protection standards are concerned, the Coast Guard has recently committed its

support to the American National Standards Institute (ANSI) for creation of a new International Organization for Standards (ISO) subcommittee on Lifesaving and Fire Protection. This new ISO subcommittee will develop internationally accepted performance standards for lifesaving and fire protection materials and equipment. We intend for these standards to fill the gap in SOLAS requirements and level the international playing field for manufacturers. We have proposed to ANSI that a member of the United States Marine Safety Association (USMSA) be the chairperson of the committee and we are encouraged that industry has joined us in this effort.

With respect to the Coast Guard's regulations on equipment approval, we have several projects underway to align Coast Guard regulations with IMO standards and recommendations. The revised regulations would also make it possible to accept many of the inspections performed by third parties, including those performed on behalf of other governments. These changes should eliminate much of the duplication of efforts by foreign manufacturers seeking Coast Guard approval, and should result in cost reductions. The legislation under consideration should make it possible for us to accept certain foreign items made to IMO standards sooner than we would have otherwise.

Mr. BATEMAN. Thank you.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Bateman.

Does the gentleman from Mississippi have any questions?

Mr. TAYLOR. Not at this time.

Mr. TAUZIN. Then let me thank the entire panel—unless you have some advice for us on health care and the crime bill.

I want to tell you how much we deeply appreciate the enormous amount of work that has preceded this effort. Let me give you a brief summary of our intentions now.

It is my understanding that the administration's bill is just about ready for introduction. They have submitted it to us. In order to get the process rolling, we will file that bill tomorrow, and we will schedule Subcommittee markup on the bill as soon as we return from the August break, that is assuming we have an August break and assuming we return from one, and hopefully in time for us to schedule markup at Full Committee some time in mid-September, which is I think the last time we will have that opportunity.

It is my intention to try to move this as a separate piece of legislation rather than simply to attach it to Coast Guard authorization at some point, if we have time to accomplish it in that fashion. That will allow us some time period upon which to perfect language to take into consideration some of the very excellent suggestions you have all made today, as well as some of the concerns that have been expressed by Hopeman and others in their written testimony to us, to make sure that the new submissions answer those questions.

So our purpose will be to use that time between now and the markup session in early September to get those last questions answered and any new suggestions submitted, and then to move to markup early September, Full Committee some time mid-September, unless something unforeseen should interrupt that schedule.

Mr. Taylor.

Mr. TAYLOR. Thank you for yielding, Mr. Chairman.

I do have a question now, it is a related question, it is not so much on the standards for a ship, but the Coast Guard's position on actual inspectors. I had a private shipyard in the small community of Pearlington, Mississippi make the request, they are kind of out of the way, the closest inspecting officer lives about 40 miles

away and has to split his time going one way to Avondale and the other way back to this small shipyard.

The shipyard has asked the question if it would be possible for him to just go ahead and pay to have an inspector there, much like the meat processors pay to have an inspector there if it is USDA-inspected, and I am sure there are other analogies throughout the Federal Government. But he says when he has got a crew of 20 chippers and painters sitting around waiting for a weld to be inspected, it would be very much to his advantage just to go ahead and pay the cost of having the Coast Guardsman there.

I was wondering if in this reform package you could consider something that would address his concerns?

Admiral CARD. Mr. Congressman, I think that, technically, we don't have the authority to ask for that at this point. There are lots of ways to satisfy that particular customer's concerns. While we haven't talked about that too much in this hearing today, our goal is to try to provide better service for all of our customers, including the shipyard down in your district.

What I would like to do, as opposed to trying to fix that here, is to work locally down there to find what we would need to do to help take care of that concern, for them to make sure that our inspection process wasn't holding up their production. That is not our goal, and so I would like to work with Admiral North and his people in the Eighth District to see what they can do to take care of that concern.

We don't have the authority right now for that kind of a thing. And I, at this point in this legislation, think it would maybe confuse it more than help it. But we will work on that issue down there, and we can solve that problem locally, I believe.

The other issue is much of what we are doing here. Depending upon the process, we would do, would delegate some of those things, depending on the size of the vessel. If the shipyard wants to, the American Bureau or somebody else could do this, and that would be a different issue. But we will work locally on that one and see what we can do.

Mr. TAYLOR. What are your thoughts on where the cutoff would be on the size of the vessel? Do you have anything off the top of your head, whether it would be delegated?

Admiral CARD. In the various things we talked about today, many ships that are the international trading ships are all classed, and most of those U.S.-flagships are classed by the ABS, virtually all of them, so they would be included.

There are many other ships which are classed. This is voluntary. They would choose, as opposed to us, if they are classed and if they want to take advantage of the system that we are putting in place. So I don't know that we would put an arbitrary number on that, but it would be left to the company to decide if they wanted to use that.

Mr. TAYLOR. Mr. Chairman, if you will bear with me for one more thing. It was 23 years ago tomorrow, like every Friday at Cape May, that I stood inspection, had chief petty officers and the like come by and tell me that something was wrong. Admiral, your name tag is out of line. As a seaman recruit, I always wanted to

be able to do that. I want to thank the Chair for bearing with me. You just made my day.

Admiral CARD. We are glad we could help you after 23 years, sir.

Mr. TAUZIN. Is there some sort of penalty prescribed? Is caning appropriate?

Admiral CARD. We hope not, sir.

Mr. TAUZIN. Again, I want to thank you and welcome you to your new assignments, Admiral Card, it is a pleasure to have you testify before our Committee, as it is to receive all of your testimony today.

As I said, it has been a good hearing, we appreciated it. We will try to expeditiously consider your suggestions and try to get this thing moving.

We do have time to do it if we all agree. We will try to make sure we have broad agreement.

Thank you very much.

The hearing stands adjourned.

[Whereupon, at 10:57 a.m., the Subcommittee was adjourned; and the following was submitted for the record:]



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

August 9, 1994

The Honorable Thomas S. Foley
Speaker of the House of Representatives
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

This letter transmits proposed legislation

"To reduce the economic burden on United States-flagged merchant vessels by streamlining certain regulatory requirements, by expanding the delegation of the performance of marine safety functions to third parties, and by broadening the Coast Guard's marine safety authority to accommodate these changes, and for other purposes."

This bill, the "Maritime Regulatory Reform Act of 1994," is part of the Administration's maritime reform initiative to provide a long-awaited, comprehensive revitalization of maritime policy for the United States merchant marine. On March 10, 1994, I transmitted to Congress the "Maritime Security and Trade Act of 1994," a proposal that will guarantee the continued existence of a fleet of privately-owned, merchant U.S.-flag ships crewed by skilled American civilian seafarers. Such a fleet is essential to the promotion and development of an American presence in international commercial shipping and trade, and also will ensure that U.S.-flag ships remain available to meet national security requirements. The bill I am transmitting to you today is the second step in the Administration's maritime reform effort.

This legislation represents steps the Department of Transportation is undertaking to reduce and harmonize regulatory requirements on the merchant marine, consistent with commitments made during the National Performance Review. Foremost, though, the Department is committed to the safe operation of all vessels on our waterways, and nothing in this proposed legislation would reduce United States standards for safety and environmental protection. Rather, by recognizing the enormous strides that have been taken in international safety standards, the legislation would permit United States-flagged vessels to demonstrate compliance with United States standards through alternative compliance programs. This, in effect, would authorize the Coast Guard to accept different means of assuring safety than the traditional governmental inspection for compliance with regulations. However, it does not authorize accepting lesser standards.

In addition, the proposed legislation would impose some new record keeping requirements on the merchant marine industry. As the United States moves away from vessel inspections using dedicated Coast Guard resources applying Federal regulations and toward the use of various alternative compliance options and the application of international and consensus standards, the Coast Guard expects to rely increasingly on reports, documents and certificates in combination with an active oversight program. The new record keeping will allow for implementation of the International Maritime Organization International Safety Management Code and the proposed Model Company Program. In implementing this authority, the Department intends to work closely with the marine industry to ensure the implementation is practical and effective. The proposed legislation would allow the Coast Guard to provide increased oversight of the shore-based management system of the ship owner in return for reducing certain existing regulatory requirements.

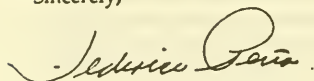
The changes in the legislation concerning equipment approval would have immediate and beneficial effects on the merchant marine industry. Currently, separate and duplicative tests must be done in this country on equipment tested and manufactured overseas. Permitting the Secretary of Transportation to accept foreign-approved equipment would eliminate a costly and burdensome requirement on United States vessel owners and shipbuilders. Another example would be vessel inspections. Most United States- flagged vessels are subject to more Coast Guard inspections than their foreign competitors are by their governments. Changes in the proposed legislation would align United States law more closely with the inspection interval requirements found in the International Convention for the Safety of Life at Sea.

Enactment of this proposal will not result in any new receipts and does not mandate any expenditures that are subject to appropriations. There will be no budget or personnel resource implications to the Coast Guard as a result of enactment of this legislative proposal. The Department anticipates that owners and operators of United States- flagged vessels would realize savings from these proposals.

The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this proposed legislation to Congress.

I recommend that the proposed legislation be enacted by Congress.

Sincerely,

A handwritten signature in dark ink, appearing to read "Federico Peña". The signature is fluid and cursive, with a large loop at the end of the last name.

Federico Peña

Enclosures

A BILL

"To reduce the economic burden on United States-flagged merchant vessels by streamlining certain regulatory requirements, by expanding the delegation of the performance of marine safety functions to third parties, and by broadening the Coast Guard's marine safety authority, and for other purposes"

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.

Section 1. SHORT TITLE

This Act may be cited as the "Maritime Regulatory Reform Act of 1994".

Section 2. SAFETY MANAGEMENT AND ALTERNATIVE COMPLIANCE

(a) Chapter 21 of title 46, U.S. Code, is amended by adding a new section 2103a to read as follows:

"Section 2103a. Safety management and alternative compliance

"(a) To implement the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization and to establish voluntary alternative compliance programs, the Secretary may prescribe regulations governing the merchant marine of the United States, merchant marine personnel, and shore-based management of vessels that affect the safety of vessels and personnel subject to this subtitle and marine pollution prevention. Compliance with regulations implementing the International Management Code for the Safe Operation of Ships and for Pollution Prevention shall be voluntary until the dates for mandatory compliance provided for in the International Convention for the Safety of Life at Sea.

"(b) In implementing the International Management Code for the Safe Operation of Ships and for Pollution Prevention and alternative compliance programs established pursuant to this section, the Secretary may establish optional regulatory requirements commensurate with the level of quality control adopted by the shipowner or operator, provided that an equivalent level of safety is maintained.

"(c) The Secretary may require vessel owners and operators to maintain records and submit reports and other information which the Secretary deems necessary to carry out the objectives of this section."

(b) The table of sections for chapter 21 of title 46, U.S. Code, is amended by inserting between the items relating to section 2103 and section 2104 the following:

"Sec. 2103a. Safety management and alternative compliance."

. 2.

Section 3. USE OF REPORTS, DOCUMENTS, AND CERTIFICATES

(a) Chapter 31 of title 46, U.S. Code, is amended by adding a new section 3103 to read as follows:

"Section 3103. Use of reports, documents, and certificates

"In carrying out this part, the Secretary may utilize reports, documents, and certificates issued by persons who the Secretary determines may be relied upon with regard to marine safety, security, and environmental protection."

(b) The table of sections for chapter 31 of title 46, U.S. Code, is amended by adding at the end the following:

"Sec. 3103. Use of reports, documents, and certificates."

Section 4. EQUIPMENT APPROVAL

Section 3306(b) of title 46, U.S. Code, is amended to read as follows:

"(b)(1) Equipment subject to regulation under this section may not be used on any vessel without prior approval as prescribed by regulation.

"(2) Except as otherwise provided in paragraph (3) of this subsection, the Secretary may accept approvals of fire and life safety equipment and materials by foreign governments which the Secretary determines utilize design and testing standards that meet the requirements of the International Convention for the Safety of Life at Sea to which the United States is a party, and its associated International Maritime Organization guidance documents.

"(3) In determining whether to accept approvals issued by foreign governments, the Secretary shall give due regard to whether adherence to standards promulgated by regulation under this subsection is necessary in order to preserve higher levels of safety."

Section 5. FREQUENCY OF INSPECTION

(a) Section 3307 of title 46, U.S. Code, is amended as follows:

(1) in paragraph (1) -

(A) by striking "and" and inserting a comma in its place;

3.

(B) by inserting after "nautical school vessel", ", and small passenger vessel carrying more than 12 passengers on an international voyage"; and

(C) by adding "and" at the end;

(2) by striking paragraph (2); and

(3) in paragraph (3) -

(A) by changing the designation of paragraph (3) to paragraph (2); and

(B) by striking "2 years" and inserting "5 years" in its place.

(b) Section 3710(b) of title 46, U.S. Code, is amended by striking "24 months" and substituting "5 years".

Section 6. CERTIFICATE OF INSPECTION

Section 3309(c) of title 46, U.S. Code, is amended by deleting the words "(but not more than 60 days)" after the words "At least 30 days".

Section 7. CLASSIFICATION SOCIETIES

(a) Section 3316 of title 46, U.S. Code, is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) In carrying out this part, the Secretary may rely on reports, documents, and certificates issued by the American Bureau of Shipping or other classification society recognized by the Secretary as meeting acceptable standards for such a society, or an agent of the Bureau or society."

(2) Subsection (c)(1) is amended to read as follows:

"(c)(1) To the maximum extent practicable, the Secretary may delegate to the Bureau or other classification society recognized by the Secretary as meeting acceptable standards for such a society, or an agent of the Bureau or society, the inspection or examination, in the United States or in a foreign country, of a vessel documented or to be documented as a vessel of the United States. The Bureau, society, or agent may issue the certificate of inspection required by this part and other certificates essential to documentation."

4.

(3) Subsection (d) is amended to read as follows:

"(d) The Secretary also may make an agreement with or use the Bureau or other classification society recognized by the Secretary as meeting acceptable standards for such a society, or an agent of the Bureau or society, for reviewing and approving plans required for issuing a certificate of inspection."

(b) The item for section 3316 of the table of sections for chapter 33 of title 46, U.S. Code, is amended to read as follows:

"Sec. 3316. Classification Societies."

COMPARATIVE TYPE

(Deleted language is in brackets; new language is underlined.)

Title 46, United States Code

Section 2103a. Safety management and alternative compliance

(a) To implement the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization and to establish voluntary alternative compliance programs, the Secretary may prescribe regulations governing the merchant marine of the United States, merchant marine personnel, and shore-based management of vessels that affect the safety of vessels and personnel subject to this subtitle and marine pollution prevention. Compliance with regulations implementing the International Management Code for the Safe Operation of Ships and for Pollution Prevention shall be voluntary until the dates for mandatory compliance provided for in the International Convention for the Safety of Life at Sea.

(b) In implementing the International Management Code for the Safe Operation of Ships and for Pollution Prevention and alternative compliance programs established pursuant to this section, the Secretary may establish optional regulatory requirements commensurate with the level of quality control adopted by the shipowner or operator, provided that an equivalent level of safety is maintained.

(c) The Secretary may require vessel owners and operators to maintain records and submit reports and other information which the Secretary deems necessary to carry out the objectives of this section.

Section 3103. Use of reports, documents, and certificates

"In carrying out this part, the Secretary may utilize reports, documents, and certificates issued by persons who the Secretary determines may be relied upon with regard to marine safety, security, and environmental protection.

Section 3306. Regulations

(a)***

(b){1} Equipment subject to regulation under this section may not be used on any vessel without prior approval as prescribed by regulation.

- 2.

(2) Except as otherwise provided in paragraph (3) of this subsection, the Secretary may accept approvals of fire and life safety equipment and materials by foreign governments which the Secretary determines utilize design and testing standards that meet the requirements of the International Convention for the Safety of Life at Sea to which the United States is a party, and its associated International Maritime Organization guidance documents.

(3) In determining whether to accept approvals issued by foreign governments, the Secretary shall give due regard to whether adherence to standards promulgated by regulation under this subsection is necessary in order to preserve higher levels of safety.

Section 3307. Frequency of inspection

Each vessel subject to inspection under this part shall undergo an initial inspection for certification before being put into service. After being put into service -

(1) each passenger vessel [and] 1 nautical school vessel, and small passenger vessel carrying more than 12 passengers on an international voyage shall be inspected at least once a year; and

[(2) each small passenger vessel, freight vessel or offshore supply vessel of less than 100 gross tons, and sailing school vessel shall be inspected at least once every 3 years; and]

[(3)] (2) any other vessel shall be inspected at least once every [2] 5 years.

Section 3309. Certificate of inspection

(a)***

(b)***

(c) At least 30 days [(but not more than 60 days)] before the current certificate of inspection issued to a vessel under subsection (a) of this section expires, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall submit to the Secretary in writing a notice that the vessel-

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(1) will be required to be inspected; or

(2) will not be operated so as to require an inspection.

Section 3316. [United States c]Classification societies

(a) In carrying out this part, the Secretary may rely on reports, documents, and certificates issued by the American Bureau of Shipping or [a similar United States classification society] other classification society recognized by the Secretary as meeting acceptable standards for such a society, or an agent of the Bureau or society."

(b)***

(c)(1) To the maximum extent practicable, the Secretary may delegate to the Bureau or [a similar United States classification society] other classification society recognized by the Secretary as meeting acceptable standards for such a society, or an agent of the Bureau or society, the inspection or examination, in the United States or in a foreign country, of a vessel documented or to be documented as a vessel of the United States. The Bureau, society, or agent may issue the certificate of inspection required by this part and other certificates essential to documentation.

(2)***

(d) The Secretary also may make an agreement with or use the Bureau or [a similar United States classification society] other classification society recognized by the Secretary as meeting acceptable standards for such a society, or an agent of the Bureau or society, for reviewing and approving plans required for issuing a certificate of inspection.

Section 3710. Evidence of compliance by vessels of the United States

(a)***

(b) Each certificate endorsed under this section is valid for not more than [24 months] 5 years and may be renewed as specified by the Secretary. In appropriate circumstances, the Secretary may issue a temporary certificate valid for not more than 30 days. A certificate shall be suspended or revoked if the Secretary finds that the vessel does not comply with the conditions under which the certificate was issued.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE.

This section states that this legislative proposal may be cited as the "Maritime Regulatory Reform Act of 1994."

SECTION 2. SAFETY MANAGEMENT AND ALTERNATIVE COMPLIANCE.

This section adds a new section 2103a to title 46, U.S. Code, to authorize the Secretary of the Department in which the Coast Guard is operating to prescribe regulations regarding shipboard and shore-based management of merchant marine vessels and personnel. This authority would include conducting examinations and requiring the maintenance of records. The purpose of this new section is to allow for implementation of the International Maritime Organization (IMO) International Safety Management (ISM) Code and the proposed Model Company Program. These initiatives recognize that many of the decisions directly affecting the safety and environmental conditions on board vessels are made ashore.

Subsection (a) authorizes regulations governing all aspects of vessel operations, including shore-based management relating to vessel safety and pollution prevention. Until the ISM Code is in effect, compliance with the regulations implementing the code is voluntary.

Subsection (b) authorizes the Secretary to establish optional regulatory requirements for vessels exercising the alternative compliance election as long as the level of safety remains equivalent to vessels under the traditional regulatory system. This in effect would authorize the Secretary to accept different means of assuring safety than the traditional government inspection for compliance with regulations. However, it does not authorize accepting lesser standards.

Subsection (cp) authorizes the Secretary to require vessel owners and operators to maintain records and to submit information to the Secretary as is determined necessary. Until the ISM Code becomes mandatory, this authority would apply only to those vessel owners and operators who voluntarily participate in the alternative compliance program.

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In implementing this authority, it is our intent to consult with vessel owners and operators to maximize the effectiveness of the quality programs adopted by the industry. The marine industry cannot be expected to join in this effort without meaningful participation in its development. The Secretary has been very active in working with industry in this regard.

Nothing in this provision lessens the need for the Secretary to continue efforts, already underway, to eliminate unneeded regulatory requirements and to harmonize, to the maximum extent feasible, U.S. requirements with those applying to foreign-flag vessels operating in our waters. The National Performance Review recognized the need for regulatory agencies to keep their regulations up to date. We are very aware that such a commitment is vital in the maritime sector.

BACKGROUND. On November 17, 1993, the International Maritime Organization (IMO) adopted Resolution 741, the International Management Code for the Safe Operation of Ships and for Pollution Prevention (the International Safety Management [ISM] Code) as a means to encourage the continuous improvement of safety management skills in the maritime industry. At the 63rd Session of the Maritime Safety Committee (MSC) of the IMO, held in London on May 16-25, 1994, a new Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) was approved.

The ISM Code is included in this new chapter of SOLAS. If the ISM Code comes into force, passenger ships, oil and chemical tankers, gas and bulk carriers, and high speed craft of 500 gross tonnage and over must comply with its provisions by July 1, 1998. Other cargo ships and self-propelled Mobile Offshore Drilling Units of 500 gross tonnage and over must comply by July 1, 2002. Until those dates, participation by owners of the various classes of ships is voluntary.

The Coast Guard currently lacks legal authority to require adoption and utilization of the ISM Code by the owners and operators of U.S. flag vessels. Its authority is largely limited to ship design, construction, manning, and operation. The ISM Code is directed at the oversight of managers ashore who make the policy decisions. These decisions have a great impact on the safe operation and environmental protection levels on the vessels. Traditionally, the Coast Guard has provided minimal oversight of these important functions ashore.

This proposal also includes other requests for authority for other management improvement options which a ship owner might undertake as an alternative compliance option. Utilization of methods such as a rigorous and documented self-inspection (under a Model Company Program, for instance) or audits by qualified

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third parties, could allow the Coast Guard to reduce the regulatory burden on participants. The proposed legislation would allow the Coast Guard to provide increased oversight of the shore-based management system of the ship owner in return for which certain existing regulatory requirements would be reduced.

Section 3. USE OF REPORTS, DOCUMENTS, AND CERTIFICATES

This section adds a new section 3103 to chapter 31 (GENERAL) of title 46, U.S. Code, to authorize the Coast Guard to utilize reports, documents, and certificates issued by various persons having particular knowledge with regard to marine safety, security, and environmental protection.

As used in this section, we intend that the term "person" mean not just individuals, but also firms, corporations, associations, partnerships, and similar organizations.

BACKGROUND Currently, the Coast Guard relies on reports, documents, and certificates issued by the American Bureau of Shipping (ABS) and by other recognized classification societies. It also relies on similar papers issued by qualified entities and persons such as professional engineers, marine chemists, the National Cargo Bureau, and the International Cargo Gear Bureau. Professional engineers perform such functions as certifying that equipment and ship designs comply with various requirements. Marine chemists perform tests to determine whether an enclosed space is gas free. Employees of the National Cargo Bureau oversee grain loading and container loading and employees of the International Cargo Gear Bureau examine cargo handling gear to determine whether it is safe for the intended use. Reliance by the Secretary on the work of these various qualified entities and persons reduces the need for the government to do this work directly and reduces the number of duplicate examinations imposed upon the marine industry.

While this provision does not authorize the Coast Guard to delegate any of its authority to these qualified persons, it does allow the Coast Guard to continue to rely on their work to carry out various marine safety, security, and environmental protection functions. With the increasing use of various alternative compliance options, such as the ISM Code and the Model Company Program, the reliance on documents prepared by various qualified entities and persons is expected to increase exponentially. The Secretary is expected to implement and maintain an active oversight program to ensure the continued integrity of the federal government's various mandates in the maritime sector, while minimizing the burden on industry.

Section 4. EQUIPMENT APPROVAL.

This section amends section 3306(b) of title 46, U.S. Code, to allow the Secretary to accept approvals of equipment issued by foreign governments which utilize standards and testing procedures equivalent to those used by the United States.

Subsection (b)(1) contains the same language as the current subsection (b) of section 3306.

Subsection (b)(2) authorizes the Coast Guard to accept foreign government approvals of fire and life safety equipment where the design and testing standards meet SOLAS requirements and associated IMO documents. In exercising this authority, the Coast Guard would make the determination of whether a foreign government's design and testing standards meet the SOLAS/IMO standards.

Subsection (b)(3) authorizes the Coast Guard, in addition to the approvals of foreign government standards and testing in paragraph (2), to consider whether higher safety standards are needed to preserve the proper level of safety on U.S. flag vessels. This paragraph in effect authorizes the Coast Guard to not accept foreign approval of fire and life safety equipment even if it meets SOLAS/IMO requirements, when higher safety standards are considered necessary.

BACKGROUND. This provision would benefit the U.S. merchant fleet by allowing them to use fire and safety equipment and materials approved by certain foreign governments. Under current law, separate and duplicative (and therefore more costly) tests must be done in this country on equipment manufactured and tested overseas. Permitting the Secretary to accept foreign approved equipment and material for such use will eliminate a costly and unnecessary regulatory burden for U.S. vessel owners and shipbuilders, increasing the competitiveness of these businesses internationally.

Various flag nations with reputable commercial fleets have vessel material and equipment standards and testing procedures which are equivalent to those promulgated through regulation by the Coast Guard. Because the Secretary does not have the authority to accept such approvals, this foreign approved equipment and material must be subjected to duplicative U.S.-approved standards and testing before use on U.S. flag vessels, driving up costs for U.S. vessel owners, shipbuilders, and many manufacturers.

The Secretary currently has the authority to determine, on a case by case basis, that foreign approved equipment and material found to be equivalent to that required by regulation can be used on a

U.S. flag vessel, but the process of determining equivalency is tedious and costly. Modifying Section 3306 to permit the Secretary to accept certain foreign equipment and materials if the Secretary determines such equipment and materials are manufactured, tested, and approved through an equivalent process would reduce costs for vessel builders, vessel owners, and the federal government.

In making such determinations, the Secretary will use this authority judiciously to ensure that the safety standards on U.S. flag vessels are not degraded and the lives of U.S. merchant mariners are not placed at risk. For instance, for certain equipment, such as life rafts, there are no known foreign standards which are currently equivalent to the higher testing standards used in the United States. Under the circumstances, the Secretary would give strong consideration to the higher levels of safety appropriate for this important item of vessel equipment. Subsection (b)(3) in effect mandates the Coast Guard to not accept foreign approval of fire and life safety equipment and materials even if they meet the standards of subsection (b)(2) when higher safety standards are considered necessary.

When the Secretary accepts equipment and materials, under this authority, for use on U.S. vessels as equivalent to equipment and materials manufactured and tested in accordance with the regulatory requirements, the equivalent standards will be acceptable for all such equipment and materials manufacturers.

Section 5. FREQUENCY OF INSPECTION.

This section amends 46 U.S.C. 3307(1) to require small passenger vessels carrying more than 12 passengers and engaged in trade on international voyages to be inspected annually (along with passenger vessels and nautical school vessels). It also amends 46 U.S.C. 3307(2) to require all other vessels to be inspected at least once every five years instead of either every two or three years as is currently the case. The change to section 3307 would, for the most part, align the U.S. inspection interval requirements with those found in SOLAS. As a technical conforming amendment, this section also amends section 3710(b) of title 46, to change the duration of a valid certificate of inspection for tank vessels from 24 months to 5 years.

BACKGROUND: Currently, most U.S. flag vessels are subject to Coast Guard inspections on a much more frequent basis than are their foreign competitors. Frequency of inspection for U.S. flag vessels is controlled by 46 U.S.C. 3307. The requirements of that statute are in excess of the requirements of the International Convention for the Safety of Life at Sea (SOLAS Convention). For most types of U.S. flag vessels, adopting the

frequency of inspection requirements found in the SOLAS Convention would not result in a lowering of safety either to those on board or to the environment.

Presently, 46 U.S.C. 3307 requires the following inspection intervals: passenger vessels and nautical school ships at least once a year; small passenger vessels, freight or offshore supply vessels under 100 gross tons, and sailing school vessels, every three years; and all other vessels every two years. These inspection intervals, for the most part, differ from the intervals required by SOLAS and international classification societies. As a result, an unnecessary burden is placed upon vessel owners in attempting to comply with flag state, SOLAS, and classification society requirements.

Under the proposal, small passenger vessels carrying more than 12 passengers in international trade, passenger vessels, and nautical school vessels would be inspected annually. All other vessels would have a five-year inspection cycle, with intermediate and annual examinations. Issuance of five year Certificates of Inspection would align U.S. inspection and certification requirements with those in the SOLAS Protocol of 1988, and with the American Bureau of Shipping (ABS) five year special periodical survey interval. The SOLAS Protocol introduces into SOLAS uniform standards for the scope and content of inspections for the issuance of certificates and for the frequency of mandatory surveys. While this Protocol is not yet effective internationally, it has been ratified by the U.S. This proposal would make U.S. law consistent with the SOLAS Protocol of 1988 and the endorsed Harmonized System of Survey and Certification.

Presently, it is Coast Guard policy for small passenger vessels subject to SOLAS (carrying more than 12 passengers and engaged in trade), on international routes, to receive one year Certificates of Inspection even though 46, U.S. Code only requires inspections every three years. This allows the vessel's Certificate of Inspection to expire at the same time as its annual Passenger Ship Safety Certificate. The legislative change, in effect, incorporates present Coast Guard policy.

We envision no decrease in the level of safety due to the inspection cycle being lengthened to five years. Vessels on five year cycles will receive annual examinations to ensure they are in compliance with their Certificates of Inspection. These annual examinations may be scheduled within two months of the certificate of inspection anniversary date which will give vessel owners more scheduling latitude than is currently the case. Nothing in this provision will affect the requirements applicable to drydock, boiler, or other interval examinations as these are a function of regulations independent of section 3307.

Section 5. CERTIFICATE OF INSPECTION

Section 3309(c) of title 46, U.S. Code, is amended by deleting the words "(but not more than 60 days)" after the words "At least 30 days".

This proposed change to section 3309(c) would allow shipowners to request inspection more than 60 days prior to the expiration of the current certificate of inspection. Modern commercial practice requires that ship schedules generally be developed six months or more in advance. The owners and operators of U.S. flag vessels, in order to adequately compete with their foreign counterparts, need to be able to make long-range commitments. The current statute restricts their ability to request scheduling of required vessel inspections. Further, it restricts the ability of the Secretary to make long-range plans for use of government personnel. There is no reason to not provide shipowners and the Secretary with this added flexibility.

Section 7. CLASSIFICATION SOCIETIES

This proposal would amend section 3316 of title 46, U.S. Code, to permit the Secretary to delegate vessel inspection and examination and plan review and approval authority to classification societies in addition to the American Bureau of Shipping (ABS). Current section 3316 limits such delegations to ABS "or a similar United States classification society." Since there is no similar U.S. classification society, there is, in effect, no delegation under this section other than to ABS.

BACKGROUND. There are over 40 classification societies worldwide, each associated or affiliated with a particular foreign nation. The degree of professionalism varies among these classification societies. Twelve classification societies (including ABS) have joined together to form the International Association of Classification Societies (IACS). IACS has been granted observer status by the International Maritime Organization (IMO).

Classification societies review vessel plans and conduct vessel examinations, primarily for insurance purposes. The Coast Guard frequently conducts plan reviews and vessel inspections which in many respects duplicate the work of the classification societies. This is particularly the case for U.S. vessels that are classed by classification societies other than ABS. The authority to accept reports of these societies is needed to prevent unnecessary duplication and cost. In furtherance of the goal of minimizing the burden on shipowners, while maintaining high standards of safety, this provision would reduce the need for

duplicate inspections, examinations, and plan reviews. The Coast Guard will exercise its discretion to determine to which classification societies it should delegate authority and the extent of any such delegation. While membership in IACS should be a minimum standard, it should not be the only standard. The Coast Guard will exercise this broadened authority judiciously. The Coast Guard will implement an active oversight program to ensure that the classification societies to which authority is delegated are performing those delegated functions in a manner consistent with U.S. law, regulation, and policy.

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
STATEMENT OF REAR ADMIRAL JAMES C. CARD
ON THE MARITIME REGULATORY REFORM ACT OF 1994
BEFORE THE
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
UNITED STATES HOUSE OF REPRESENTATIVES
AUGUST 11, 1994

Thank you, Mr. Chairman. I am pleased to address the Subcommittee to provide an update on our Maritime Reform efforts. As you know from previous testimony given by Vice Admiral Henn, we have been working side by side with the marine industry to develop new ways of doing business to create win-win programs for all concerned. Our major focus has been on developing optional methods for owners of U.S. flag vessels to demonstrate compliance with U.S. maritime safety laws and their regulations. These efforts are moving ahead smoothly; some are able to go forward without changes to existing laws or delegations of authority, others will require amendments or additions to Title 46, U.S. Code.

Just this week, Secretary Peña forwarded to you proposed legislation that will implement these changes. Industry also provided you a proposal that we helped them develop. The proposals are very similar and both recommend changes that will permit the Coast Guard to recognize company quality management programs. Throughout this testimony, the term "quality" is used to describe programs and systems that provide process consistency. This is accomplished through formalized and well documented practices and procedures in accordance with established guidelines or standards, such as the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) or the the series of International Organization for Standardization (ISO 9000) standards. The changes will help reduce regulatory burdens by providing the authority for alternative compliance programs. These programs eliminate redundant tests and inspections the Coast Guard and classification societies each require. They should provide greater incentives for owners to build U.S. flag vessels and should strengthen our merchant marine. In conjunction with non-legislative maritime regulatory reform initiatives, these legislative changes should support the ability for our domestic yards and manufacturers to compete in international markets for equipment and vessel construction, repair, and servicing work.

Combined with strong oversight programs, the proposed amendments will enable the Coast Guard to move toward greater reliance on alternative resources and methods to accomplish our safety compliance enforcement mission on U.S. flag vessels without any degradation to maritime safety. This change is needed to allow the Coast Guard to direct some resources to those areas of marine transportation which are known to impose the greater safety risks i.e., foreign flag vessels operating in U.S. waters. I offer the following comments on the proposed legislation.

Legislative Proposals

Title 46, U.S. Code, Section 2103a - Implement the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention

This proposal includes two important provisions. It gives the Secretary the authority to implement the ISM Code and, it will provide the authority to recognize a company's safety management system as a key element in developing and establishing programs which offer alternative methods for demonstrating regulatory compliance.

The ISM Code establishes internationally agreed upon guidelines for safety management systems. It addresses the human factor

contribution to safety and pollution prevention by formalizing the processes and procedures of both shipboard and shoreside company personnel related to vessel operations and maintenance.

In May of this year, the Maritime Safety Committee of the International Maritime Organization (IMO) adopted a new Chapter IX to Safety Of Life At Sea (SOLAS) which will make compliance with the ISM Code mandatory internationally on July 1, 1998 for passenger ships, oil and chemical tankers, gas and bulk carriers, and high speed craft subject to SOLAS. It will be mandatory internationally on July 1, 2002 for other cargo ships and self-propelled Mobile Offshore Drilling Units.

The member states of IMO were requested to implement the ISM Code voluntarily prior to it becoming mandatory. Accordingly, the Coast Guard has issued a Navigation and Vessel Inspection Circular (NVIC) to establish a voluntary program recognizing ISM Code certificates issued by the American Bureau of Shipping as evidence of a company's voluntary compliance with the ISM Code. Since its publication, two other classification societies, Det Norske Veritas and Lloyds Register of Shipping, have requested that we review their processes and procedures for evaluating compliance with the ISM Code. We have found them to be acceptable, and now recognize their ability to attest to a company's compliance with the ISM Code. However, there is currently no legal authority to require adoption of the ISM Code by owners and operators of U.S. flag vessels, nor do we have the authority to enforce ISM Code compliance for foreign flag vessels operating in U.S. waters. The proposed legislation would allow the Coast Guard to conduct oversight of shore-based management systems where many of the company-implemented safety policies and determinations for vessels are made.

The authority provided by this proposed change will also provide a framework to support a company's quality management and safety inspection program in lieu of using Coast Guard inspection resources for various shipboard inspections and tests under a Maritime Regulatory Reform initiative termed the Model Company Program. The model company concept is currently being tested in the form of a pilot streamlined inspection program with the offshore industry and, on a limited scale, with a tanker fleet in two separate Coast Guard districts. The pilot programs show promise as viable ways of ensuring regulatory compliance while achieving increased acceptance of responsibility by company management to ensure vessel safety and compliance with applicable rules and regulations. The Coast Guard envisions application of this same philosophy to other segments of the industry involved with ship design and construction as well. We look forward to working with designers and builders to determine how recognition of their quality systems can be used to satisfy regulatory requirements. Together with delegation to other third parties, sound oversight, and auditing programs, the Model Company Program could prove to be a highly effective way of reducing regulatory burdens on those who qualify for and elect this compliance option.

Alternative inspection schemes which credit owners and operators for instituting quality safety management programs will provide them with greater control over their operations. It should provide incentives for them to sharpen their focus on internal safety programs by offering them an option for reduction in regulatory burdens.

Programs which promote company safety and quality management systems can result in improved overall vessel safety by making safety policies and decisions a greater part of the company's business practice, reinforcing and underscoring the principal role that designers, builders, owners and operators must play in vessel safety. Focusing the programs on those whose decisions have the most impact on day-to-day operations should result in safer seas and a cleaner environment.

Title 46, U.S. Code, Section 3103 - Broader Coast Guard Authority to Accept Reports, Documents, and Certificates in Evaluating Safety Compliance

In practice, the Coast Guard has long been accepting various reports, documents, and certificates as evidence of compliance with certain regulations. Reports issued by the American Bureau of Shipping, the National Cargo Bureau, the International Cargo Gear Bureau, reputable testing and servicing agencies, and recognized labs are typical of such acceptances. However, these have always been done on a case-by-case basis and generally in an overly conservative manner considering, among other things, the influence legal liabilities realistically impose on the business world. The proposed amendment to section 3103 of the U.S. Code does not expand any delegation of functions; it would merely clarify the Coast Guard's authority to rely on the work performed by responsible third parties.

The benefits of this change are far reaching and affect all members of the maritime community. Owners and operators benefit from the elimination of redundant inspections and tests required by the classification societies and the Coast Guard, and the associated costs for testing services, vessel down time, etc. Designers and builders realize reduced time and cost in obtaining approval of vessel design proposals and plans through a "one-stop shopping" service. Safety equipment manufacturers and servicing companies will realize smoother interface with their customers in the marine industry (shipyards, operators, etc.) and with regulatory bodies through the ability to accept certificates and reports from authorized and recognized agents. This would avoid the inefficiencies associated with the need to coordinate schedules to ensure all parties are present to witness tests and inspections, and avoid the cost and inefficiencies involved to arrange for duplicate tests and inspections when schedules do not coincide.

Title 46, U.S. Code, Section 3306(b) - Acceptance of Foreign Government Approvals of Fire and Life Safety Equipment for Compliance with SOLAS

The Coast Guard does not have the general authority to accept approvals of fire and life safety equipment and materials granted by foreign governments. There are provisions in the regulations for accepting equipment found to be equivalent; however, this is a time and resource intensive process. Other foreign governments have approval procedures and processes equivalent to those of the U.S. in meeting SOLAS equipment requirements. The Coast Guard has determined it is unnecessary to require duplicative tests and inspections on equipment made by foreign manufacturers that have been tested and accepted by their national governments. This legislative change would allow the Coast Guard to recognize and accept foreign government approvals where it is found that their approval process meets SOLAS, with due regard for the need to ensure high standards are maintained.

Title 46, U.S. Code, Section 3307 - Harmonization of Inspection Frequencies with International Requirements

The proposed legislative change to section 3307 harmonizes the interval prescribed by law for issuance of documents pursuant to an inspection for certification, with the intervals for issuance of international convention and classification society documents.

While the section speaks of inspection frequencies, the number of vessel examinations throughout the service life of the vessel will not change. The change will extend the term of validity of the certificate of inspection from two years to five years. This is clear when section 3307 is read in conjunction with section 3309. The legislation does not affect the existing requirements for hull examinations involving drydocking, and it is not intended to do so.

Harmonization of the terms of validity of certificates will make the paperwork management process more efficient for both industry and the Coast Guard. It also aligns our paperwork with that used by the classification societies, making delegation easier for both.

Title 46, U.S. Code, Section 3309(c) - Revised Application Procedures for Certificates

The change to section 3309(c) would permit owners and operators to request Coast Guard inspection more than 60 days prior to the expiration of their vessel's certificate of inspection. Current law restricts them to 60 days advance notification. The Coast Guard agrees to allow this added flexibility for owners and operators in scheduling inspections.

Title 46, U.S. Code, Section 3316 - Acceptance of Classification Society Reports, Documents, and Certificates to Evidence Compliance with Certain Safety Requirements

The Coast Guard currently has delegated many plan review and inspection functions to the American Bureau of Shipping. The proposed change to section 3316 would allow the Coast Guard to delegate certain functions to other classification societies as well. There are over 40 classification societies worldwide. Eleven of these (including the American Bureau of Shipping) are members of the International Association of Classification Societies and several, in addition to ABS, are the classification society of choice for many U.S. flag vessel operators. As with our delegation of functions to ABS, authority for delegation of functions to other classification societies would be applied judiciously to ensure safety standards remain high while programs to reduce redundant tests and inspections are implemented.

Reciprocity Between ABS and Other Class Societies

The industry proposal contains text which requires reciprocity for ABS in those foreign countries which are home to other classification societies which the Coast Guard may recognize and include in the implementation of various Maritime Regulatory Reform initiatives. While there is no such provision in the Coast Guard legislation, we have no objection to the concept of such a provision, and would like to work with staff to develop the specifics.

Summary

The proposed legislative amendments are important and we believe reflect industry consensus on meaningful changes. The proposed changes will allow the Coast Guard to implement international convention provisions that will soon be mandatory internationally, harmonize U.S. requirements with international requirements, and support various Maritime Regulatory Reform initiatives which we have worked with industry to develop.

Thank you, Mr. Chairman. I would be pleased to answer any questions.

Statement on Behalf of

AMERICAN PRESIDENT LINES, LIMITED,
THE AMERICAN INSTITUTE OF MERCHANT SHIPPING,
AND OTHER SHIPOWNERS

Presented by

GENE PENTIMONTI
VICE PRESIDENT, AMERICAN PRESIDENT LINES, LIMITED

Regarding

THE MARITIME REGULATORY REFORM ACT

Before the

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION COMMITTEE
ON MERCHANT MARINE AND FISHERIES
UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

August 11, 1994

Mr. Chairman and Members of the Subcommittee:

Good morning. I am Gene Pentimonti, Vice President of Government Services for American President Lines, Limited (APL). My prepared statement this morning is presented on behalf of APL, members of the American Institute of Merchant Shipping, and other shipowners who have been working with Coast Guard to improve the international competitiveness of the U.S.-flag fleet. I am pleased to be here today to provide testimony on the "Maritime Regulatory Reform Act of 1994."

My testimony will focus on the "Maritime Regulatory Reform Act of 1994" as drafted by the industry working group. Our draft, which is attached to my testimony, is equivalent in scope and organization to the Committee's draft bill, but differs somewhat in details of the drafting. We look forward to working with the Committee staff on the final draft of a maritime regulatory reform bill.

For nearly three years now APL, Sea-Land and other U.S. shipowners have been working on eliminating costly, unnecessary regulatory requirements because they are one of the major cost disadvantages of building and operating U.S.-flag vessels. We have found that many regulatory requirements can be eliminated or modified with no decrease in safety but with a significant reduction in costs.

Our efforts over the past three years have been guided by a simple and, we believe, correct principle -- safety should be a level playing field. The same standards should apply to all ships entering U.S. waters, whether they fly a U.S. flag or a foreign flag.

International standards provide an equivalent level of safety to U.S. standards and they should be accepted. Wherever U.S. standards are outdated or inefficient, they should be modified. If changes are needed to provide an additional margin of safety over and above international requirements, they should be advanced in international maritime organizations for adoption by all countries.

I am very pleased to say, Mr. Chairman that we have made significant progress toward this goal over the last year and especially since the last hearing before this Committee. I would like to thank you and all of the members of this Committee for providing the leadership necessary for this task. I would express our appreciation for the valuable support Secretary Peña has provided to the effort to identify and eliminate regulations that impede U.S. shipbuilding and operating competitiveness and the willingness Coast Guard has shown to working with industry on achieving this goal.

The industry's legislative proposal -- which again is the same in concept and scope as the Committee's draft -- is an important component of a number of steps being taken to reduce regulatory burdens for the U.S.-flag fleet and to create a level playing field for safety. Two of the fundamental building blocks of a level playing field are reflected in this proposal.

- The first building block is that a level playing field requires consistent application of consistent standards.

The potential for more consistent application of standards is included in Section 7 of the proposed bill. Section 7 authorizes Coast Guard to use other classification societies in addition to the American Bureau of Shipping to supervise the design, construction, and inspection of U.S.-flag vessels if, as a matter of equity, there is reciprocity for ABS in foreign countries. This legislative change, along with some administrative changes also being implemented to strengthen Coast Guard reliance on and oversight of classification societies, eliminates the current costly and inefficient duplication of inspection, testing and review by ABS and Coast Guard and offers shipowners more operating flexibility in its choice of classification society. ABS and other classification societies perform such functions for other well-respected national fleets. Allowing them to perform the same function for U.S.-flag vessels, subject to Coast Guard oversight, can reduce significantly costs for American shipowners and result in a more consistent approach to safety enforcement among U.S. and foreign vessels.

But to achieve an internationally level playing field, a more consistent approach to enforcement must be coupled with more consistent standards. Coast Guard is taking a number of steps administratively to make U.S. requirements more consistent with international requirements, and we are very supportive and appreciative of the Coast Guard's efforts. Sometimes, however, legislative changes are required. For example, Section 5 of our proposed legislation eliminates a discrepancy between U.S. and international certificates of inspection by changing the length of the term of a U.S. certificate to five years. This simple change, which will in no way reduce the number of annual, mid-term, and special surveys or inspections, will eliminate costly administrative and duplicative inspection costs for shipowners.

- The second building block for a level playing field is equal access to material and equipment found to meet internationally accepted safety standards.

Section 4 of our proposed bill would allow U.S. vessel owners to use foreign manufactured materials and equipment found by the Secretary to be subject to acceptable design and testing standards. If a foreign vessel operator can go to his local marine Hechinger's, purchase a fire extinguisher, install it in his vessel, and have that fire extinguisher accepted as safe when the vessel enters U.S. waters, U.S. owners should be permitted to use that fire extinguisher as well. Under current statutory requirements, the fire extinguisher cannot be used unless it goes through separate (but equal) Coast Guard testing procedures or unless the vessel owner undertakes the very time consuming and expensive process of proving that the extinguisher is equivalent to Coast Guard requirements. Equipment and materials found to be safe should be available for use by all shipowners, whether American or foreign.

Other sections of our bill address issues related to Coast Guard's regulatory reform efforts. For example, Section 2 would give Coast Guard more flexibility in designing regulatory enforcement alternatives. Some vessel owners have asked Coast Guard for the opportunity to achieve regulatory goals in a more flexible manner in order to achieve operational efficiencies. If Coast Guard determines that an equivalent level of safety would be provided through a more flexible approach, such flexibility should be allowed through a voluntary compliance program. This section of the bill would allow Coast Guard to pursue the concept of a "model company program." This concept, which Coast Guard has supported for a number of years, is one in which several vessel owners have expressed an interest because it would offer the potential for more operational efficiency and cost savings.

Section 2 also provides Coast Guard with the statutory authority it needs to implement the internationally approved International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the international maritime community as a part of the International Convention for the Safety of Life at Sea. The requirements of this Code, commonly referred to as the ISM Code, do not become mandatory for tank vessels until 1998 and until 2002 for container ships. However, some vessel owners may decide that early compliance, on a voluntary basis, is beneficial to them, either for marketing or operational purposes. Legislative authority is needed for Coast Guard to establish a voluntary program for early compliance with the Code as well as to establish compliance requirements for the time in which the Code becomes mandatory. Coast Guard implementation of ISM Code requirements would follow completion of a study undertaken in cooperation with the maritime industry and other affected parties, a step that the maritime industry believes is essential to effective and acceptable implementation of the Code.

Coast Guard needs this legislative authority now. Coast Guard must report to the International Maritime Organization that the United States can meet its obligation to implement this internationally adopted safety management code. If Coast Guard is to maintain its position as a leader in the effort to get the international community to improve the level and uniformity of safety management among all flag states, it must meet this obligation soon and with certainty. Maintaining Coast Guard's role in developing consistent, acceptable international safety standards is important to achieving the level playing field U.S. shipowners are seeking.

In addition, the ISM Code will offer the United States another element of port state control over foreign flag vessels that carry 96% of our trade but fly the flag of another country. Because the ISM Code is part of SOLAS, Coast Guard will be able to verify compliance with the ISM Code and intervene in cases where compliance is not found.

Mr. Chairman, we deeply appreciate the opportunity to appear before you today to reaffirm our need for regulatory reform. We recognize that it is late in the legislative process for proposing new legislation, but we believe that this legislation is critically important and that it cannot and should not be delayed. The U.S.-flag fleet must be able to compete with foreign flag fleets. We believe this legislation will help us achieve that goal, as well as to maintain high safety standards.

I would be pleased to respond to any questions the Committee may have.

TESTIMONY
BY
THE
AMERICAN BUREAU OF SHIPPING

ON
THE
"MARITIME REGULATORY REFORM ACT OF 1994"

SUBCOMMITTEE ON COAST GUARD
AND NAVIGATION
COMMITTEE ON MERCHANT MARINE
AND FISHERIES

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

AUGUST 11, 1994

Mr. Chairman and Members of the Committee, thank you for this opportunity to present our statement on maritime regulatory reform initiatives. We commend the Chairman and Members of the Committee for their initiative in revising shipbuilding standards to improve the competitiveness of United States-Flag operators and United States shipyards.

My name is Frank J. Iarossi. I am Chairman of the American Bureau of Shipping (ABS). ABS is a non-profit corporation recognized by the Congress as the official United States ship classification society.

ABS was founded in 1862 to help develop the Merchant Marine of the United States. In 1920 ABS was appointed by the Congress as the "agency" to be recognized by the Federal Government for classification of government owned vessels. Our unique statutory relationship with the Government now approaches its 75th year.

ABS, as a classification society, establishes and administers standards, known as "Rules," for the design, construction, and periodic survey of ships, offshore drilling units and other marine structures. ABS presently employs over 800 engineers and surveyors plus 600 support staff worldwide.

The particular focus of my testimony in this hearing is the proposed amendment to 46 USC § 3316, "United States classification societies." This amendment is part of the industry consensus package and I believe is agreed to by all interested persons.

The United States Coast Guard, which administers United States maritime regulations, has previously delegated to ABS some of the technical, survey, and certification functions concerning both international maritime conventions to which the United States is signatory, and United States national requirements. This recognition is comparable to the recognition many foreign governments have given to the classification societies domiciled within their respective countries. For the most part, a preferential or exclusive recognition to provide statutory services, in accordance with various international maritime conventions and national regulations, has been given only to the respective home societies by their home governments. Traditionally, classification societies have been an extension of their respective national governments. But the world is changing and ABS recognizes this.

Essentially, the proposed amendment would allow certain delegations of authority to qualified foreign classification societies whose home countries give equal reciprocity to ABS, the American classification society.

ABS supports improvement in United States shipbuilding standards and believes in the spirit of greater international cooperation. We are entering an interdependent world with a globalized economy. Accordingly, we feel other qualified classification societies should be free to promote their services in the United States and should be eligible for delegation of certain statutory authorizations from the United States Coast Guard — provided ABS is afforded both equal access to the other societies' home country markets for our services and equivalent reciprocal recognition by the other societies' home governments.

We believe that reciprocity must be spelled out in the statute. We are all aware of general notions of "reciprocity" which have not worked in international relations because the details have not been spelled out in the law. ABS believes it is time to state the meaning of reciprocity in the language of the statute.

By "reciprocity" we mean equal and demonstrable access to the foreign market in a timely manner. ABS believes its position on reciprocity is fair and reasonable. First, if United States laws were changed to allow the United States Government, through the Coast Guard, to delegate statutory certification services to foreign class societies, with no equivalent reciprocity, not only would ABS be placed at a distinct disadvantage, but it could cause ABS irreparable harm; and, second, there is already ample precedent for a reciprocity requirement written into Title 46 of the United States Code as well as numerous other laws and policies.

Reciprocity is a fundamental principle and well-established in U.S. law and policy, particularly Coast Guard laws, for example: "Reciprocity for Foreign Vessels" (vessel inspections) (46 USC § 3303); "Reciprocity for Foreign Vessels" (load lines) (46 USC § 5109); and "Reciprocity for Foreign Vessels" (measurement of vessels) (46 USC § 14306). Further reciprocity for shipping is found in federal taxation (exemption for shipping income if "foreign country grants an equivalent exemption...") (26 USC § 883 (a)(1)); tonnage tax (46 USC § 121); international trade (19 USC § 2111, *et. seq.*); and many other programs.

The European Union's "Draft Council Directive on Common Rules for Maritime Administrations and Ship Inspection and Survey Organizations, European Council Working Document 6/4/94," is expected to be adopted later this year. It contains provisions addressing recognition and delegation of authority by Union members' governments to classification societies headquartered in the European Union. However, it indicates that Union member States may decline to delegate authority to qualified classification societies headquartered in other Union member States until at least 1998 and possibly beyond.

The Draft Directive also states that a Union member government may request reciprocal recognition for the qualified classification societies headquartered in the European Union prior to granting recognition to a classification society, such as ABS, which is headquartered outside the Union. Thus, as written, European Union member States could revoke ABS' current recognitions or refuse to extend them, if the USA were to decline to provide reciprocal recognition for all the qualified classification societies headquartered in the European Union, even though individual Union member States could still refuse to recognize all of those classification societies or ABS.

Finally, the Draft Directive only applies to Union member States' oceangoing vessels subject to the international conventions engaged in international trade. It does not address cabotage vessels or those engaged in domestic, inland trade — even with respect to delegation of authority to class societies headquartered in other Union countries, let alone organizations such as ABS. Thus, to achieve true reciprocity in line with the Union's Draft Directive, the USA could consider delegating authority to

European Union based societies only for US-Flag vessels engaged in international trade, subject to the international conventions and only provided the European Union home governments of those societies all delegate comparable authority to ABS — and at the same time.

To our knowledge, the home governments of other societies limit delegations to their home societies with respect to governmentally owned vessels and governmentally subsidized vessels. ABS concurs with this approach and we feel reciprocity should not extend to such vessels for reasons of national security and because public funds are involved. Also, delegations of authority with respect to vessels in cabotage or domestic services are commonly limited to the home society.

Consistent with our position just outlined, ABS has proposed amendments to 46 USC § 3316, which have been submitted together with a statement providing a more detailed explanation of our position. A copy of our earlier statement is appended to my testimony for ready reference.

In conclusion, we hope that the USA will continue its leadership role by forging a new, rational and equitable policy for the delegation of statutory services based upon the principles of quality, performance and demonstrable reciprocity.

Appendix: Letter to Chairman Tauzin of 14 July 1994.

APPENDIX TO TESTIMONY BY THE AMERICAN BUREAU OF SHIPPING

AUGUST 11, 1994



Ref. to: RA-94-0918
File Ref.: T-18-7/srm

14 July, 1994

Honorable W.J. "Billy" Tauzin, Chairman
U.S. House of Representatives
Committee on Merchant Marine and Fisheries
Coast Guard and Navigation Subcommittee
Room 541, House Annex II
Washington, D.C. 20515

Subject: Coast Guard Shipbuilding Requirements
Proposed Amendment to 46 USC 3316

Dear Mr. Chairman;

The American Bureau of Shipping ("ABS") commends the Chairman and Members of the Committee for their initiative in revising shipbuilding standards to improve the competitiveness of U.S. flag operators and shipyards. Part of this process involves the role of the classification societies, and ABS is pleased to submit its views for your consideration.

ABS is recognized in Federal Statute as the classification society of the U.S. Government. As such, the U.S. Coast Guard, which administers U.S. maritime regulations, has delegated to ABS some of the technical, survey, and certification functions concerning both international maritime conventions, to which the U.S. is signatory, and U.S. national requirements. This recognition is comparable to the recognition many foreign countries give to their own national classification society.

As a point of information, there are some 40 classification societies of various sizes worldwide, the largest and better known are members of an organization called IACS - The International Association of Classification Societies. They, and their country of origin or "home" country, are:

TWO WORLD TRADE CENTER, 106TH FLOOR, NEW YORK, NEW YORK 10048 USA
TEL. 212-839-5000 TLX: 232099 ABNY UR FAX. 212-839-5130



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AMERICAN BUREAU OF SHIPPING & AFFILIATED COMPANIES

Class Society

American Bureau of Shipping (ABS)
 Bureau Veritas (BV)
 China Classification Society (CSS)
 Det Norske Veritas (DNV)
 Germanischer Lloyd (GL)
 Korean Register of Shipping (KR)
 Lloyd's Register of Shipping (LR)
 Nippon Kaiji Kyokai (NKK)
 Polski Rejestr Statkow (PRS)
 Maritime Register of Shipping (RS)
 Registro Italiano Navale (RINA)

Home Country

United States
 France
 People's Republic of China
 Norway
 Germany
 Korea
 United Kingdom
 Japan
 Poland
 Russia
 Italy

Historically, there has been a close and cooperative relationship between the classification services of these societies and the statutory certifications administered by their home governments. It is evident from Table 1 that each of these societies currently enjoys a considerable nationalistic preference for their classification services by vessels flying their "home" country's flag. Part of this is due to owners' preference, but a significant part is also due to:

- the preferential or exclusive authorization of the society by its home government to provide statutory services under the international conventions, as evidenced in Table 2, and
- the reliance placed by the government on the home society's classification rules and services. Some governments explicitly cite their home society's Rules in their national regulations, just as the USA does at present. And at least one government requires by law that all vessels flying its flag be classed by its home society.

Similarly, most of these governments currently afford little or no delegation of authority to societies other than their home society with respect to certification of vessels engaged in cabotage and domestic service.

ABS supports improvements in U.S. shipbuilding standards. Further, ABS believes that other classification societies should be free to promote their services in the United States and should be eligible for delegation of certain statutory authorizations from the United States Coast Guard -- provided ABS is afforded equal freedom of access to the other societies' home country markets for its services and equivalent reciprocal recognition by the other societies' home governments.

By "reciprocity," we mean equal and demonstrable access to the foreign market in a timely manner. This access extends to laws, regulations, policies and practices by which



classification, certification and related services are delegated and performed. "Reciprocity" must include the extent and scope of the delegations, the timing thereof and the type, sizes, and services of vessels covered. Reciprocity should consider whether the affected vessels are commercially owned, government owned or government subsidized. To our knowledge, none of the home governments of the IACS member societies delegate authorities with respect to governmentally owned vessels [nor governmentally subsidized vessels] to other than their home society. ABS concurs with this approach both for reasons of national security and because public funds are involved. Thus, ABS does not feel reciprocity should extend to government owned or government subsidized vessels.

Therefore, if U.S. laws were changed to allow the U.S. government, through the Coast Guard, to delegate statutory certification services to foreign class societies, with no equivalent reciprocity, ABS would be placed at a distinct disadvantage which could cause ABS irreparable harm.

The European Union is also currently studying delegation of authority matters. The current "Draft Council Directive on Common Rules for Maritime Administrations and Ship Inspection and Survey Organizations, European Council Working Document 6/4/94," (extract attached), which is expected to be adopted later this year, contains provisions addressing recognition and delegation of authority by Union member governments to classification societies headquartered in the European Union. However, it indicates that Union member States may decline to delegate authority to qualified classification societies headquartered in other Union member states until at least 1998 and possibly beyond.

Further, the Draft Directive states that a Union member government may request reciprocal recognition for the qualified classification societies headquartered in the European Union prior to granting recognition to a classification society, such as ABS, which is headquartered outside the Union. Thus, as written, European Union member States could revoke ABS' current recognitions or refuse to extend them if the USA were to decline to provide reciprocal recognition for all the qualified classification societies headquartered in the European Union even though individual Union member States could still refuse to recognize all of those classification societies or ABS.

Finally, the Draft Directive only applies to Union member States' oceangoing vessels subject to the international conventions engaged in international trade. It does not address cabotage vessels or those engaged in domestic, inland trade--even with respect to delegation of authority to class societies headquartered in other Union countries, let alone organizations such as ABS. Thus, to achieve true reciprocity in line with the Union's Draft Directive, the USA could consider delegating authority to European Union based societies only for US flag vessels engaged in international trade subject to the international conventions and only provided the European Union home governments of those societies all delegate comparable authority to ABS--and at the same time.



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ABS

AMERICAN BUREAU OF SHIPPING & AFFILIATED COMPANIES

Having reviewed the draft language for proposed amendments to 46 U.S.C. S 3316, and based upon the discussion above, ABS respectfully submits the attached amendment.

In conclusion, the USA has always been a leader in international maritime affairs. On this particular matter, we have a new paradigm which can only be navigated by government to government agreements and cooperation. We hope that the USA will continue its leadership role by forging a new, rational and equitable policy for the internationalization of these services based upon the principles of quality, performance and demonstrable reciprocity. We appreciate the opportunity to submit our statement and look forward to working with the Committee to achieve a fair and level playing field internationally.

Very truly yours,

A handwritten signature in dark ink, reading "F. Iarossi", with a stylized flourish at the end.

Frank J. Iarossi
Chairman and CEO

Table - 1

Ship Classification by 'Home' Society (Ships > 1000 GRT)

Country of Registry	Home (1) Society	% Classed By Home Society (2)
China, Peoples Republic	CCS	98%
France, National & Other	BV	91%
Germany	GL	97%
Italy	RINA	99%
Japan	NK	100%
Korea, South	KR	100%
Norway	DNV	98%
Norway - NIS	DNV	75%
Poland	PRS	93%
Russia	RS	91%
United Kingdom	LR	83%
United States	ABS	98%

Source: Lloyd's World Shipowning Groups - Aug 93

- | | | |
|-----|------|-------------------------------|
| (1) | CCS | China Classification Society |
| | BV | Bureau Veritas |
| | GL | Germanischer Lloyd |
| | RINA | Registro Italiano Navale |
| | NK | Nippon Kaiji Kyokai |
| | KR | Korean Register of Shipping |
| | DNV | Det Norske Veritas |
| | PRS | Polski Rejestr Statkow |
| | RS | Maritime Register of Shipping |
| | LR | Lloyd's Register of Shipping |
| | ABS | American Bureau of Shipping |

- (2) Gross Registered Tons Basis

Table – 2
 Delegation of International Certification Authority
 Reported by the Class Societies to IMO's FSI-2 Sub-Committee
 November 1993

Country of Registry	Class (Home)	1968	Tonnage		SOLAS, 74 / 78 Protocol							MARPOL (73/78)	
		Load Line	Int'l 1969	Nat'l	Cargo Ship					Pass Ship Cert	Annex 1	Annex 2	
					Safety Construct	Safety Equip	Safety Radio	Bulk Chem	Gas Code				
China, Peoples Republic	ABS CCS DNV LR	F L L	F L L	L L	F L	F L	F L	F	F	F	F	F	
France	ABS BV DNV LR	F F F F			P								
Germany	GL	L			L							L	
Italy	ABS DNV LR RI	L F		P	L F	L P	L			P	L F	L F	
Japan	NK	F			P			P	P		P	P	
Korea, South	ABS BV DNV KR LR	L F F F P	L L		F L F	L	F L				F	F	
Norway	ABS BV DNV GL LR	F F F F			L P P P P	L P		P	P		F F F L F		
Norway, NIS (as of April 94)	ABS BV DNV GL LR	F F F F P	P F F F P		F F F F P	F F F F P	F F F F P	F F F F P	F F F F P		F F F F P	F F F F P	
Poland	CCS DNV LR PRS	F F	L F		P L P						F	F	
Russia	DNV RS	L F	L F		L F	F	F	F	F	F	L F	F	
United Kingdom	ABS BV DNV GL LR	F F F F	F P F F	F P	F F P P	L		L			L L P		
United States	ABS BV CCS DNV GL LR RI	F L L P P	F F F		F L L						P	P	

Legend

- F Authorized to carry out surveys, plan review and issue necessary certificates
 P Authorized to carry out surveys and plan review; Administration issues Certificates
 L Limited authorization such as case-by-case basis or geographic restriction

EXTRACT FROM EUROPEAN UNION

**"DRAFT COUNCIL DIRECTIVE ON COMMON RULES FOR MARITIME
ADMINISTRATIONS AND SHIP INSPECTION & SURVEY
ORGANIZATIONS"**

EUROPEAN COUNCIL WORKING DOCUMENT, 6/4/94

ARTICLE 5

1. In applying Article 3 (2) (i), Member States shall in principle not refuse to authorise any of the recognised organisations located in the Community to undertake such functions, subject to the provisions of Articles 6 and 10. However, they may restrict the number of organisations they authorize in accordance with their needs provided there are transparent and objective grounds for so doing. At the request of a Member State, the Commission shall, in accordance with the procedure laid down in Article 12, adopt appropriate measures.
 - (a) By way of derogation, Member States may be temporarily exempted by the Commission from the implementation of the provisions of paragraph 1 until 31 December 1997.
2. In order for a Member State to accept that an organisation located in a third State is to carry out the duties mentioned in Article 3 or part of them it may request that the said third State grant a reciprocal recognition for those recognised organisations which are located in the Community.

PROPOSED AMENDMENT

Amend Section 3316 of Title 46, United States Code:

- (1) by revising subsection (a) to read as follows:

"(a) In carrying out this part, the Secretary may rely on reports, documents, and certificates issued by the American Bureau of Shipping or other recognized classification society."

- (2) by revising paragraph (c) (1) to read as follows:

"(c) (1) To the maximum extent practicable, the Secretary shall delegate to the American Bureau of Shipping or other recognized classification societies the inspection or examination of a vessel documented or to be documented as a vessel of the United States. The classification society may issue the certificate of inspection required by this part and other related certificates."

- (3) by revising subsection (d) to read as follows:

"(d) The Secretary also shall, to the maximum extent practicable, make agreements with or use the American Bureau of Shipping or other recognized classification societies for reviewing and approving plans required for issuing a certificate of inspection.", and

- (4) by adding a new subsection (e), to read as follows:

- "(e) No delegation to any "other recognized classification society" may be made unless (A) the foreign nation, community, or union of nations of origin (collectively referred to herein as "Country") of such "other recognized classification society" provides equal reciprocity (meaning unrestricted, timely and demonstrable access to its Country's market for international and domestic vessels for all classification, certification and related services) to the American Bureau of Shipping, and (B) the "other recognized classification society" has offices and maintains records in the United States, demonstrates financial responsibility, and meets and maintains standards for a classification society acceptable to the Secretary."

Statement of
UNITED STATES MARINE SAFETY ASSOCIATION

Presented by
KRISTINA L. GOLDFIELD
EXECUTIVE DIRECTOR, USMSA

Regarding
CHANGES TO THE LIFE SAFETY AND FIRE FIGHTING EQUIPMENT
SECTIONS OF TITLE 46 OF THE UNITED STATES CODE

Before the
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC
AUGUST 11, 1994

Mr. Chairman and Members of the Subcommittee:

Good morning. My name is Kristina Goldfield. I am Executive Director of the United States Marine Safety Association (USMSA), the national trade association representing marine safety equipment manufacturers, safety service providers, and safety training organizations. My prepared statement is presented on behalf of the 150 member companies of the USMSA.

When we appeared before this Subcommittee on June 22, 1994, we were concerned that proposed changes to 46 USC 3306(b) could arbitrarily lower some life saving equipment standards on U.S. flag vessels. The Safety of Life at Sea Convention (SOLAS) guidelines are minimums acceptable to the Convention's signatories. Because of lessons learned in casualty investigations over the last 100 years, the United States and some other nations have standards and regulations that exceed the minimal guidance of SOLAS.

In some instances, the SOLAS convention is silent. Inflatable liferaft fabrics are an example where there are no SOLAS or other international standards. For 30 years domestic manufacturers built inflatable life rafts with fabric manufactured in accordance to Military Specification. The Coast Guard had a difficult time determining equivalencies for innovative materials produced both here and abroad. Three years ago the USMSA and the Coast Guard developed a performance standard for determining fabric equivalency. These deliberations included USMSA members from France, United Kingdom and Denmark. We want high standards such as these to remain the benchmark for lifesaving equipment on U.S. flag vessels. We also support Coast Guard initiatives to raise safety standards for all flag states and are willing to work with them to ensure that the global seas are a safer place.

There are other instances where standards have differences but no distinction. These differences may impede the approval process for foreign manufacturers in this country. Domestic manufacturers are also often inhibited in their ability to obtain foreign approvals because of arbitrary standards. We do not support arbitrary standards that only protect one nation's business. We strongly support higher standards to protect seafarers.

Since our last appearance before this Subcommittee we have had many discussions with

- more -

the Coast Guard and representatives of U.S. flag liner operators. We all have a better understanding of each other's concerns. It is understandable that U.S. shipping interests wish to operate on a "level playing field." This is also our desire; however, the final results of this initiative cannot sacrifice the reliability of critical abandon ship survival equipment. The safety of U.S. flag vessels, U.S. merchant vessels, and passengers embarked at U.S. ports cannot be degraded for economic gain. Our initial concerns were directed towards the lack of acceptance of meaningfully higher domestic standards, the lack of true and meaningful reciprocity for domestic manufacturers by foreign administrators, and compromises for foreign equipment while U.S. mandates remained on domestic equipment. These remain our concerns.

In *Semi-Paratus*, the 1981 oversight report of the Coast Guard, the Committee on Merchant Marine and Fisheries wrote:

"It should be remembered that the responsibilities now handled by the Coast Guard were assumed for a reason. The Coast Guard, in most instances, accepts duties which Congress at some point believed were being performed inadequately or inefficiently either by the private sector or by some other agency of federal or state government. If a particular problem is not perceived as serious today, it may be a tribute to, rather than a criticism of, the Coast Guard's regulatory role. Congress should not dismantle a regulatory system which one maritime disaster later will - in response to a public outcry - have to be reassembled."

We feel that the statutory language and the legislative history language as submitted is acceptable to the parties involved, and will not be viewed as an arbitrary dismantling of safety standards, as long as it is the intent of the Secretary, the U.S.C.G. and Congress to uphold the true spirit of this language.

This concludes our prepared statement. I would be pleased to respond to any questions the Subcommittee may have.

232/USMSA/flag

OCEAN ADVOCATES

a voice for the silent sea

August 11, 1994

Statement of Sally Ann Lentz

Before the Subcommittee on Coast Guard and Navigation

of the Merchant Marine and Fisheries Committee

Concerning

The Maritime Regulatory Reform Act of 1994

On Behalf of

Ocean Advocates

and

Coast Alliance

Blair Station Box 1073, Silver Spring, MD 20910
Columbia Office: 6424 Misty Top Pass, Columbia, MD 21044
TEL: 301-972-8849 FAX: 410-5315237

Statement of Sally Ann Lentz
Before the Subcommittee on Coast Guard and Navigation
August 11, 1994

I am Sally Ann Lentz, Co-Director and General Counsel of Ocean Advocates, a non-profit organization devoted to the protection, conservation and wise use of marine and coastal resources. In all of our activities we are dedicated to protecting the oceans for the people and wildlife that depend upon them for life, livelihood and enjoyment. Coast Alliance is a non-profit corporation formed in 1979 by a number of groups and individuals concerned about the effects of unprecedented development pressure on the U.S. coasts. The Alliance was founded for the purpose of increasing public awareness of the coast's immense value, bringing new and important scientific facts about coastal ecology to public attention, encouraging groups across the country to work for protection of valuable coastal resources, and urging federal, state and local governments to strengthen policies and programs to protect coastal ecosystems. I appreciate the opportunity to testify at this hearing on the proposed Maritime Regulatory Reform Act of 1994 (the proposed legislation) on behalf of Ocean Advocates and the Coast Alliance.

Implementation of the ISM Code

The most significant provision of the proposed legislation is implementation of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management [ISM] Code). As a member of the U.S. delegation to the Marine Environment Protection Committee of the International Maritime Organization (IMO), I have followed closely the development of the Code and its adoption as a mandatory provision of the International Convention for the Safety of Life at Sea (SOLAS). Ocean Advocates and Coast Alliance strongly support those provisions of the proposed legislation which seek to implement the ISM Code in the U.S.

Implementation of the ISM Code will facilitate a "culture of safety" within the shipping industry. The problem is stated by one observer as follows:

Good ship management depends on a culture of safety, where safety issues are given high priority in the boardroom as well as in the ship. This culture will influence the running of the company and its ship at all levels, including instructions, supervision and training. Some companies are very conscious of the need for good, well managed ships and sensitive routing, whilst others clearly go for the cheapest options, regardless of the possible consequences. The

best need encouragement and support in managing their responsibilities. Sanctions need to be applied to the worst.

Currently, the more responsible ship owners and operators employ some degree of quality assurance to ensure effective safety management. However, such action, while clearly beneficial to safety, the environment and ultimately business, does entail an expense not born by so-called "marginal" operators, and allows such operators to enjoy a greater degree of competitiveness and/or higher profits. Mandatory application of the ISM Code on an international basis requires all ship operators and owners to embrace the culture of safety and institute a comprehensive safety management system to ensure coordination and consistency throughout the organization - from ship to shore and vice versa. Therefore, mandatory implementation of the ISM Code fills a critical gap in regulation of the shipping industry, by providing what is essentially a licensing system for ship operators. It directly addresses one important aspect of the somewhat elusive "human factor" in shipping, by providing a system for enhancing both shore-based and ship-board operations and the relationship between the two. Responsibilities throughout the organization are clearly defined and lines of communication are clearly drawn for both routine and exceptional (emergency) circumstances.

The stated objectives of the ISM Code are "to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular, to the marine environment, and to property." The keystone of the code is the requirement that each company develop and implement a Safety Management System (SMS) which includes:

- .1 a safety and environmental protection policy;
- .2 instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;
- .3 defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
- .4 procedures for reporting accidents and non-conformities with the provisions of [the] Code;
- .5 procedures to prepare for and respond to emergency situations; and
- .6 procedures for internal audits and management reviews.

The documents used to describe and implement the SMS are referred to as the "Safety Management Manual" (SMM). Based on the adequacy of the SMS, a company will be issued a Certificate of Compliance and each ship will be issued a "Safety Management Certificate" to verify compliance with the Code. In addition, the ISM Code certification scheme audits owners for compliance with agreed safety management systems. Of particular importance in the Code are paragraphs 10.3 and 10.4. These provisions require identification of weaknesses in vessel systems and active efforts to prevent failure of those weak points by including preventive measures in the ship's operational maintenance routine. These provisions, along with internal safety audits, should contribute significantly to overall ship safety, and consequently, pollution prevention.

Application of the ISM Code internationally should facilitate elimination of "marginal" ship managers. Industry attempts to accomplish this on its own over the past five years have not been successful. Voluntary implementation of safety or quality systems has revealed a broad range of options which have caused confusion about what might be accepted internationally. Implementation of the ISM Code will largely put an end to that confusion, and, at the same time, maintain significant flexibility for achievement of the goal of improved safety management.

Implementation of the ISM Code in U.S. law at this time will enable the U.S. to set the standards internationally to ensure the most effective implementation. The IMO is currently in the process of developing guidelines for implementation of the ISM Code. Congressional approval of the proposed legislation will facilitate Coast Guard negotiations on development of the guidelines so as to encourage the highest possible standards, and will place the U.S. in the forefront of efforts to address the human element in ship safety and pollution prevention.

The critical need to implement the ISM Code at the earliest possible date is recognized internationally. The Chief Inspector of Marine Accidents, in his report on the Braer incident, recommended that the provisions of the Code be implemented by the shore management of shipping companies as "a matter of urgency before they become mandatory in 1998." That recommendation was supported in the results of the Lord Donaldson Inquiry, "Safer Ships, Cleaner Seas."

While we believe an earlier date (prior to 1 July 1998) for application of the Code on a mandatory basis is both warranted and achievable, we recognize the difficulty of requiring compliance by U.S. companies before the same standard is applied worldwide. We believe the proposed legislation, which will allow development of necessary regulations for implementation at this

time will encourage voluntary compliance at an earlier date, and, at the same time, will prevent a last minute rush for certification in 1998, when the Code becomes mandatory on a worldwide basis.

We would prefer a 1 July 1998 date for entry into force for all types of ships. The rationale for mandatory application of the Code first to passenger ships, tankers, gas carriers and bulk carriers by that date, is to achieve improvement first in those vessels which pose the greatest safety and marine pollution risks. Other cargo ships and mobile offshore drilling units (MODU's) are not subject to the ISM Code until July 1, 2002. However, MODU's operate much like ships, and pose similar safety concerns and similar risks to the marine environment. Establishment of Safety Management Systems for MODU's would improve their safety record in much the same way as is expected for improvement of ships' safety. Therefore, a later application date for MODU's is not warranted.

We recommend mandatory application of the ISM Code on July 1, 1998, to all ships over 150 gross tons and those ships under 150 gross tons which are used for commercial purposes. We also support mandatory application of the ISM Code for Mobile Offshore Drilling Units (MODU) by that same date.

In sum, implementation of the ISM Code is expected to significantly improve the quality of shipping operations and consequently improve safety and pollution prevention. We therefore, strongly support those provisions of the proposed legislation which provide the Coast Guard authority to develop regulations for implementation of the ISM Code.

ISM Code vs. Alternative Compliance

We are concerned, however, about the structure of the proposed legislation which appears to link implementation of the ISM Code with amendments to other regulatory requirements. We believe these are two separate (although not unrelated) initiatives and the legislative language must clearly distinguish the two. We understand that the Coast Guard is introducing proposed legislation which may provide more clarity, but at the moment we must respond to the language that is currently before us.

Specifically, in Subsection 2103a (a), it must be clearly understood that the voluntary alternative compliance programs refer to other requirements of this subtitle, and not to implementation of the ISM Code. There should be no alternative or substitute to such implementation. The Section-by-Section analysis accompanying this draft legislation appears to suggest that a "Model Company Program" could substitute for compliance

with the ISM Code. We strongly object to such a proposal. The ISM Code should be strictly adhered to. A Model Company Program might contribute to compliance with the Code, but it should not be accepted as a substitute for compliance.

We are deeply concerned about the statement in the Section-by-Section analysis that:

The section allows the Secretary to provide increased oversight of the shore-based management system of the ship owner in return for which certain existing regulatory requirements would be reduced.

We hope that this is a misstatement and does not represent the true intent of the proposed legislation. The Coast Guard does not need to provide a quid pro quo for compliance with the ISM Code. The mandatory nature of the Code has been determined by IMO. As parties to the SOLAS Convention, the U.S. is bound to implement the Code. Compliance with the Code will not be optional for shipowners and operators. In addition, we strongly oppose efforts to "reduce" existing regulatory requirements. We do not, however, oppose providing some degree of flexibility in meeting the requirements, so long as an equal or greater level of safety or pollution prevention can be achieved, and so long as the Coast Guard is provided some guidance in carrying out its discretionary authority in approving alternative means of compliance.

In Subsection 2103a(b) the implication is that implementing regulations would be delayed pending submission of a report to Congress on the implementation and enforcement of the ISM Code - as long as one year after enactment. While such a study has merit, we object to such a delay, especially with respect to regulations for voluntary compliance. As noted above, the international community recognizes the urgency of implementing the Code. Those companies that wish to comply on a voluntary basis prior to its mandatory application, should have the benefit of the guidance that could be provided by the Coast Guard. We believe such guidance could and should be provided promptly so as to facilitate immediate action by those industry representatives who are eager to move forward with implementation.

We have serious concerns about the language provided in Subsection 2103a(c). We strongly oppose allowing the Secretary to authorize "relief from regulatory requirements" for shipowners and operators. The regulatory requirements that currently exist should be strictly adhered to unless a shipowner or operator can demonstrate positively that its proposed alternative provides safety and pollution prevention equivalent to or in excess of what is currently required.

Equipment Approval

As regards the proposed amendment on equipment approval in Section 4 of the proposed legislation, we recognize the desire of the Coast Guard and industry to avoid expensive and duplicative testing procedures. However, all equipment and materials approved by the U.S. should be judged by the same performance standard. The issue should be whether it performs in a fashion which provides safety equal to or in excess of what is required under U.S. statutes or regulations, rather than whether the design and testing standards meet the SOLAS requirements. While Subparagraph 2 of proposed Section 3306(b) may be intended to address this concern, it falls short of requiring a minimum level of safety as exists in U.S. regulations. To "give due regard to whether higher levels of safety are required," provides the discretionary power to ignore existing minimum standards of safety and pollution prevention capability. We object to such broad discretion.

Frequency of Inspection

We recognize that current law makes a distinction between "inspections" and "examinations." The former refers to those examinations necessary for issuance of certificates, while the latter refers to interim examinations to verify continued compliance. We understand that extending the time for inspections from 2 years to 5 years will extend the validity of the certificate of inspection from 2 to 5 years, but will not effectively alter the frequency of inspection. Ships will continue to be examined for continued compliance on an annual basis. We are concerned, however, that because the scope of the annual examination may be less extensive than an inspection for purposes of certification, that, in effect, the overall verification process for ship compliance may be somewhat diminished. The amendment should provide some assurance that the scope of the annual examination will be augmented to ensure adequate verification of compliance.

Classification Societies

Proposed Section 3316(a) would allow the Secretary to delegate authority to the American Bureau of Shipping or "other recognized classification societies." There are over 40 classification societies worldwide. The capability of these organizations varies significantly. The Secretary should be provided more specific guidance on what constitutes a "recognized" society or one which is acceptable for delegation of authority under U.S. law.

The IMO has recently set the standards for "recognized organizations." New Regulation 1 of Chapter XI of SOLAS requires

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organizations acting on behalf of administrations to comply with IMO Guidelines for the authorization of organizations acting on behalf of the Administration, which were adopted by the Organization in November, 1993. (Resolution A.739(18)). These guidelines provide specific criteria for identifying organizations capable of carrying out delegated responsibilities. Among the requirements contained in the guidelines is the organization seeking recognition should develop, implement and maintain an effective internal quality system and should be subject to certification of its quality system by an independent body of auditors recognized by the Administration. We recommend that recognized classification societies be further defined in the proposed legislation as those which comply with the IMO Guidelines.

Conclusion

In conclusion, Ocean Advocates and Coast Alliance strongly urge this Subcommittee to support speedy implementation of the ISM Code (at least on a voluntary basis until July, 1998) by authorizing the Coast Guard to move forward with promulgation of implementing regulations.

Greater care must be taken in drafting the other provisions of the proposed legislation to ensure proper guidance to the Secretary in exercising his or her discretion, and to ensure that efforts to provide for greater flexibility in compliance with the current regulatory regime does not jeopardize safety or pollution prevention concerns. Substantial revision of the current legislative language is necessary to provide such assurance.



PASSENGER
VESSEL
ASSOCIATION

Statement
of the
Passenger Vessel Association

On Maritime Regulatory Reform

808 17th Street, NW,
Suite 200
Washington,
DC 20006-3910

Subcommittee on Coast Guard and Navigation
Committee on Merchant Marine and Fisheries

U.S. House of Representatives

August 11, 1994

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formerly
the National
Association
of Passenger
Vessel Owners

STATEMENT OF THE
PASSENGER VESSEL ASSOCIATION
BEFORE THE COAST GUARD AND NAVIGATION SUBCOMMITTEE
ON MARITIME REGULATORY REFORM

Mr. Chairman, it's a pleasure to submit comments for the record on this very significant proposal that seeks to assist a small segment of our national merchant marine. What these proposals may mean to the rest of the Coast Guard certificated fleet is problematical.

The participants whose efforts have produced this far reaching proposal have had the benefit of many hours of discussions and negotiations which have produced agreements on both problem definition and possible solutions. This initiative was motivated by the legitimate concerns of the deep sea fleet and sought to remedy their specific problems. As a consequence, we do not have an in depth understanding of the genesis of this proposed bill and today can only comment on how the proposed changes appear to affect the domestic passenger vessel industry.

We applaud the willingness of the Coast Guard to look at industry identified problems and to jointly seek solutions. When similar conditions have occurred in the domestic passenger vessel industry, we have found the Coast Guard unique among regulators in their willingness to reach out and work with industry.

Where we reference the domestic passenger vessel industry in this statement, we mean both passenger vessels and small passenger vessels. PVA represents substantial segments of both categories of Coast Guard inspected passenger vessels. If a comment or observation applies only to one or the other, the statement will so indicate.

The statutory language that you are considering today grants broad authority to the Coast Guard to act, articulates major shifts in the way regulation is accomplished and is stated in open ended or unlimited terms. Given our industry's history with the Coast Guard, our limited insight into the aims of the authors of this draft legislation, and the unlimited nature of the authorities proposed, we find ourselves unable to endorse certain of these proposals at this time as they may be applied to domestic passenger vessels. Some of our reservations address specific proposals but the bulk of our concern may come from a lack of understanding of what the Congress and the Coast Guard foresee for the majority of the regulated fleet in the context of these broad authorities and directive statutes. We do want to participate in this debate, however, because it does shape the future for us all.

Section 2. Safety Management and Alternative Compliance

We must presume that any implementation of the International Safety Management Code (ISM) will be predicated on need and be an appropriate remedy or tool for the affected fleet.

Mr. Chairman, as you recall, we testified before you in June, 1993 on the subject of Coast Guard construction standards. One specific problem that you helped us address was the adoption of internationally developed, deep sea based passenger vessel stability criteria for the domestic fleet. The standards would have eliminated, among others, many proven riverboat designs through the requirement of wholly inappropriate range of stability criteria when the domestic vessel designs have extraordinary righting energy rather than range. Before the regulation was suspended, many builders of domestic passenger vessels were required to stop bidding contracts and were starting to lay off their workers.

We see a parallel here. The ISM Code was developed in an international forum to

address the problems of company safety management as defined by the international community. The target companies involve large, sometime multi-national entities with multi-million dollar capital plants, manned and operated by unknown crews, where primary communication between management and labor is carried out through manuals, operating plans and other correspondence. The vessels operate far from the principal office, relying heavily on services by non-company entities and must sail into and through a host of alien statutory and regulatory environments. The Code is paper and process intense.

Domestically, the majority of passenger and small passenger vessel operators are both management and labor. Most domestic operators in passenger vessel service have limited duration and distance routes, with exclusive or strongly shore based maintenance, manned by family and small groups of known individuals. There is little doubt that the typical domestic operator has good communication and close oversight with his employees and vessels. We think most domestic passenger operating entities are inherently in compliance with the concept of the Code, but could never support the paper and process requirements as we understand them.

This section does offer some future relief in paragraph (c) albeit in an offhand manner. We believe our future lies in "self inspection" or certification by specially designated industry professionals that a product, design, operation or process complies with Federal regulation. We have testified before this Subcommittee to that effect at both the June 1993 and June 1994 hearings on Coast Guard construction standards. As you recall, our PVA member New Orleans Steamboat Company currently is involved in developing a cooperative inspection agreement with the Marine Safety Office in New Orleans.

This possibility of future inspection relief for domestic passenger vessel operations must be derived by interpretation of the sentence "In implementing voluntary alternative compliance programs established pursuant to this section, the Secretary may authorize relief from regulatory requirements commensurate with the level of quality control adopted by the shipowner or operator." The section-by-section analysis seems to support our view that this language gives the Coast Guard authority to accept alternatives other than those based solely on the ISM Code.

Alternative compliance tools for the domestic passenger vessel fleet of the nature which we see as desirable, need to be separately defined and clearly stated. However, we believe that it is premature to recommend how or what alternative or combination of alternatives -- self inspection or industry agent inspection -- is the most effective and reliable form of inspection for all interested parties.

Paragraph (d) is open ended and there is no test of capability to comply.

Section 3. Use of Reports, Documents, and Certificates

This section attempts to codify a practice that has great merit in attempting to avoid duplication of effort. It may also provide the necessary enabling language to support the alternative of industry professionals certifying compliance with Federal regulation. Without a discussion of what the best future course might be, however, it is hard to assess the utility of the proposed language beyond the fact that it attempts to codify current practice.

Section 4. Equipment Approval

The proposed (b)(1) seems to narrow all equipment approvals to the Secretary where existing language states "prescribed by regulation." Since regulation creation is an existing power of the Secretary, the reason or intent of this proposed change is unclear.

Section 5. Frequency of Inspection

We agree that five year certificates are desirable even if not necessary to harmonize with class surveys or international inspections. Realistically, as the term of a certificate is lengthened, the intermediate checks or reinspections become more detailed; therefore, there is a point of diminishing returns. A five year certificate term would not exceed that point.

The Coast Guard has in its regulatory impact analysis on the Supplemental Notice of Proposed Rulemaking For Small Passenger Vessels, (Subchapters T & K) claimed a cost/benefit through lengthening the term of the Certificate of Inspection on current, T(L) small passenger vessels from one to three years. From that analysis we can assume that a similar or greater benefit would accrue if all small passenger vessels went to a five year term certificate.

The extent to which this provision is adopted will determine the degree to which we can claim savings under pending inspection user fees and can limit other costs directly associated with inspection for certification activities. These costs can involve planning, down time, equipment service personnel, destructive and non-destructive testing and similar extraordinary costs.

Section 6. Certificate of Inspection

Removal of this barrier to advance planning is helpful and we view it positively.

Section 7. Classification Societies

This section is of the greatest concern to the domestic passenger vessel industry, particularly those operating small passenger vessels. It changes a discretionary power in current statute to a mandate, from "may" to "shall". It appears to place the Coast Guard and the regulated public in an untenable position where third parties may demand and could prevail in laying claim to ever greater roles in the Federal government's marine safety program. It may also lead to imposition of a third party role in areas of the marine industry where the third party has no presence or history. Hence there would be yet another layer, another cost, and another external control on the private industry. For the domestic passenger vessel industry this would come without any demonstrated need or justification.

Historically, there has been a minimum classification society presence in our domestic passenger vessel industry. The addition of yet another cost such as class approvals and surveys, particularly without any corresponding benefit, would sink many of our members. If this delegation is applied outside the deep sea target population, which is classed, it could only serve the future business opportunities of classification societies.

The language of the proposed legislation is open ended. Could a classification society present the Secretary with a set of rules for any segment of the industry under his/her regulation and demand that the Secretary delegate the broad authority of regulation compliance to the classification society? It would appear so and we do not believe that this legislation is intended to force the Secretary to cede the inspection program to classification societies upon demand.

Mr. Chairman, this concern on our part has existed for some time and has been the subject of correspondence between ourselves and the Commandant of the Coast Guard. At our last convention, we adopted a public policy position statement on the "Coast Guard Role in Commercial Vessel Safety Regulation". I have attached a copy of that position but I would like to quote the last paragraph.

"We do not support delegation of passenger vessel safety inspection activities to third parties. Delegation to third parties leads to a loss of regulator expertise, a loss of regulator sensitivity and a loss of direct accountability. Industry finds itself less able to communicate with the government agency that controls its destiny."

We need only look to the mandatory statutory delegation of loadline assignment and inspection to the American Bureau of Shipping as a demonstration of our concerns.

In February, we wrote the Commandant to share our Association position and concerns about the Coast Guard's future inspection role in our industry. Admiral Henn responded on the Commandant's behalf. His response pre-dates this proposed legislation but we assume it is still valid. Admiral Henn said "I assure you that the Coast Guard has no intention of forcing third party inspections upon the small passenger vessel industry."

For our other members, the passenger vessel owners (Subchapter H vessels), the guarantee was less certain, but certainly seemed to point to "self inspection" of some degree. Admiral Henn said "I do not wish to rule out third party inspections of passenger vessels owned by your membership, but such a program would be developed in concert with your Association. It would appear that the type of program you are developing with the Eighth District better suits your membership needs." We take the reference to the Eighth District program to mean the on-going efforts of PVA member New Orleans Steamboat Company and the New Orleans Marine Safety Office to develop a model self inspection program.

Mr. Chairman, the Passenger Vessel Association appreciates the opportunity you have given us to comment on the proposed "Maritime Regulatory Reform Act of 1994". We are grateful for a regulatory process where your Subcommittee, the Coast Guard and all segments of the marine industry can work towards our common goal of a safe industry operating with minimum regulation and maximum communication and understanding. We appreciate our opportunity to participate in this process. While we have grave reservations about elements of this legislation and cannot support them as proposed if applied to our domestic passenger vessel industry, we believe the process is right.

In closing, with respect to the domestic passenger vessel industry, we strongly oppose third party inspection, we see the move to five year certificates as positive, and we see the ability to develop a process of self inspection and industry certification as vital to the survival of the domestic passenger vessel industry as well as the role of the Coast Guard in commercial vessel safety.

PASSENGER VESSEL ASSOCIATION PUBLIC POLICY POSITION

Coast Guard Role in Commercial Vessel Safety Regulation

Issue:

Government self examination of its roles and the Coast Guard's continuing reassessment of its own ability to carry out the roles and missions assigned to it will lead to future changes in the government/industry relationship.

Status:

Over the last several years the Coast Guard has shown a tendency to delegate or transfer commercial vessel safety responsibilities to other parties. Navigation and Vessel Inspection circular (NVIC) 10-92 encourages the involvement of licensed professional engineers in vessel plan review and has enabled classification society penetration into the plan review process of small passenger vessels. In a non public agreement which alters the provisions of existing regulation, the Coast Guard has given the National Transportation Safety Board jurisdiction over accident investigations involving passenger vessels which carry more than 49 persons. The Coast Guard, by its adoption of SOLAS regulation into regulations for domestic vessels (non SOLAS) has transferred the domestic regulatory process to the international arena. Through agreements in the 1980's the Coast Guard has vested the American Bureau of Shipping with authority to conduct substantial plan review, some inspections and all vessel admeasurement on behalf of the Coast Guard.

A Coast Guard initiative in maritime regulatory reform is expected to propose owner options for alternatives to Coast Guard inspection for classed vessels in international service.

With increasing pressure to direct significant resources to environmental duties from a shrinking pool, some see the Coast Guard's salvation in delegation of significant inspection duties to third parties.

In June, 1993 we laid out the Association's vision of the government's future regulatory safety role for the House of Representatives Subcommittees on Merchant Marine and on Coast Guard and Navigation as follows:

In the near term there is no better alternative to the business as normal structure of the Coast Guard as the regulator and industry as the regulated. We both have strong, focused assets that can be mutually supportive. The team work that characterized our joint history can be used to modernize our construction regulations. Preservation of an effective program requires our mutual investment.

Eventually, we believe that the marine safety program must move towards industry execution under government delegation. Escalating costs of government, the rising cost of maintaining a full range of marine specific standards and the need to capitalize on the breadth and depth of industry expertise and experience will move us in that direction.

Association Position:

When it becomes necessary or desirable for the Coast Guard to withdraw from any aspect of passenger vessel industry regulation, the first decision must be whether that function can be eliminated entirely. Some areas of regulation have long ago achieved their goals and are no longer relevant to safety. If a function must continue to be preformed, then delegation to industry through self certification or by industry professionals serving under some agent relationship must be entertained.

We do not support delegation of domestic passenger vessel industry inspection activities to third parties. Delegation to third parties leads to a loss of regulator expertise, a loss of regulator sensitivity and a loss of direct accountability. Industry finds itself less able to communicate with the government agency that controls its destiny.



Lloyd's Register of Shipping
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 Fax No.: (212) 363-9610 (GP.III)

U.S. House of Representatives
 Committee on Merchant Marine
 and Fisheries
 Room 1334, Longworth House Office Building
 Washington, DC 20515-6230

Our ref AJL/WFS

Your ref -

Date 8th August 1994

Gentlemen:

RE: MARITIME REGULATORY REFORM

Reference is made to the US House of Representatives Committee on Merchant Marine and Fisheries,
 Subcommittee on Coast Guard and Navigation,
 Chairman: Billy Tauzin
 Notice of Public Meeting into Maritime Regulatory Reform

Lloyd's Register of Shipping has the following comments:-

Lloyd's Register supports the Administration's initiative in considering alternative means for operators and designers of US Flag commercial vessels to comply with its varied design and inspection requirements.

Lloyd's Register supports the Coast Guard's consideration of accredited third party oversight in lieu of Coast Guard's design approval and inspection, as an established and proven method for Marine Administrations to assure compliance with statutory requirements. Such an oversight scheme is practiced with success by other discerning Maritime Administrations such as UK.

Lloyd's Register agrees that a greater alignment of the Coast Guard's regulations with international standards will help to reduce the cost disadvantage incurred by the US Maritime Industry in the world market place.

Lloyd's Register agrees with the Coast Guard's observation that the US maritime industries should strive to eliminate duplications and inconsistencies among international, domestic and Classification Society requirements. This will, ultimately, lead to improved efficiency in the Maritime Industry, and will reduce and eliminate unnecessary costs.

Lloyd's Register agrees that it is very important that the Coast Guard interpretations of legislation allow for a system of alternatives that are practical enough to allow that degree of flexibility necessary to accommodate the varying levels of sophistication in the advancement of services to the Maritime Industry. It is noted that not all organizations posturing as Class Societies, nor all Flag state Administrations have equivalent standards and competence in the development of modern risk management and loss control.

Lloyd's Register supports the use by ship owners and operators of the International Safety Management Code (ISM), and Lloyd's Register advocates reliance on this approach to safety management by all parties concerned with marine safety and environmental protection.

Lloyd's Register supports the Coast Guard's reliance on the International Association of Classification Societies (IACS) and its internal Quality Management program and associated internal audit process, as a basis for providing third party oversight on behalf of Maritime Administrations, subject to effective monitoring by those Administrations.

Lloyd's Register advocates that only full time, fully complying members of IACS be considered for statutory authorization by the Coast Guard.

Lloyd's Register does not support legislation that provides American Bureau of Shipping (ABS) with a virtual monopoly in the supply of classification services to the US Maritime Industry.

Lloyd's Register is an INDEPENDENT INTERNATIONAL Classification Society and whilst it may be perceived by the Maritime Industry to be British in origin, it must be recorded that the UK Government does not recognize Lloyd's Register as having any preferential role whatsoever.

It is therefore considered that the interests of the US Maritime Industry will be best served when US legislation specifies the Qualifications and Quality requirements for Classification Societies and does not refer to equivalence to ABS.

There is no Coast Guard requirement for any vessel to be classed or, in particular, to be classed with ABS. Classification is, to that extent, voluntary and the reasons for an owner's selection of a particular class society are many and varied.

Some US owners choose not to class their ships with ABS and have chosen other societies.

US Legislation that does not afford to other classification societies who class US Flag ships, authority to carry out inspection on behalf of the Coast Guard, puts Owners of these vessels at a disadvantage to owners electing to use ABS, is contrary to the Administration's desire to promote a level playing field and gives ABS a clear market advantage.

Lloyd's Register fully supports the precept of the Maritime Regulatory Reform legislation and its intent to revitalize the US Maritime Industry.

As an independent International Class Society, Lloyd's Register wishes to offer its assistance in the development and implementation of emerging programs. In particular, Lloyd's Register would be able to offer assistance in the following tasks.

1. Identification of key elements in developing an effective Flag state oversight program, using approved Class Societies.

Lloyd's Register is currently operating with and on behalf of 140 national authorities and provides seconded Specialists to several flag state administrations in their role of developing and implementing IMO Convention requirements.

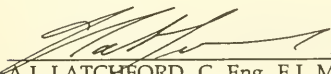
2. To develop unified approval and testing programs for any equipment which is not specifically covered by the contract between the shipbuilder and the owner within the scope of classification. Such equipment is frequently covered by type approval by the Flag Administration.

Lloyd's Register's long established Type Approval System can provide a firm foundation upon which to develop consistent and reliable standards.

3. It is expected that with a level playing field together with free and fair competition will come a greater openness and freedom of information.

Lloyd's Register is prepared to participate in discussions on how the industry may move toward a global Maritime Information data base.

Yours sincerely,


A.J. LATCHFORD, C. Eng. F.I. MAR.E
Chief Representative and
Senior Principal Surveyor
for the USA

HOPEMAN BROTHERS, INC.

August 8, 1994

The Honorable W. J. Tauzin
 Chairman, Subcommittee on
 Coast Guard and Navigation
 H2-541 Ford House Office Building
 Washington, DC 20515-6231

SUBJECT: Marine Regulatory Reform

Dear Congressman Tauzin:

We would like to applaud the efforts of this administration and the U.S. Coast Guard to level the playing field for the US shipyards and ship owners without sacrificing marine safety. The U.S. Coast Guard has appropriately accepted the leadership role in IMO Fire Protection in updating the SOLAS regulations of Chapter II-2.

The participants within IMO have worked very hard to reduce ambiguities in the regulations and replace them with performance tests and clearly defined acceptance criteria using IMO Resolutions and ISO standards. We at Hopeman Brothers Inc. encourage and support the use of these regulations and standards in revising our codes.

The material approval process for joinery/marine accommodations is a four part procedure:

1. A performance test with clearly defined acceptance criteria is stated for the particular material end use.
2. An independent laboratory is selected to evaluate the material and design as stated in the performance test
3. The laboratory submits the results of the test in a report to a marine authority for review and approval.
4. Material and processes of manufacturer are monitored by a third party to verify product compliance to be that which was tested and approved

It is our recommendation to this committee and U.S. Coast Guard to revise the applicable codes by unifying the test procedures and acceptance criteria by using SOLAS Regulations. In doing this all manufacturers would test their products and design using the same procedures and criteria.

We strongly suggest that the U.S. Coast Guard control the laboratory verification or accreditation process, accept and review the laboratory reports and issue material approvals, and monitor the inspection process. This process would not add additional cost to shipbuilding and would continue our high confidence level the public is expecting in regards to fire safety.

If the complete material process is turned over to a classification society or if foreign approved materials are accepted on face value, there is a high probability that fire safety will be reduced and the public will suffer the consequences of your decisions. We believe that the following is common knowledge among the marine fire protection community:

1. Past experience has demonstrated that material and designs tested at a foreign laboratory will not automatically pass the same test when tested in the United States and evaluated per the same acceptance criteria.

The Honorable W. J. Tauzin
August 8, 1994
Page Two

2. Product monitoring of production by factory verification of foreign approved materials is very limited. Factory visits range from a frequency of once per year to once every three years. The factory visits many times are no more than social calls which enable the inspection agency to invoice the manufacturer or holder of the material approval.
3. There are foreign approved materials which do not meet all the acceptance criteria of the standard by which they were tested. Certain acceptance criteria have been overlooked if the design meets the intent of the test.

The above issues have the effect of placing American suppliers and manufacturers at a cost disadvantage compared to foreign suppliers.

Additionally, we have concerns related to the potential liability exposure for both ship owners, shipbuilders, suppliers and the U.S. Coast Guard if due care is not exercised in the material approval process.

Our policy has always been and will continue to be the use of safe materials and designs.

Sincerely,

HOPEMAN BROTHERS, INC.

A handwritten signature in dark ink, appearing to read "Daniel H. Romanchuk", written in a cursive style.

Daniel H. Romanchuk
Vice President/Operations

Statement For the Record

By

Silas O. Nunn, Acting President

Shipbuilders Council of America

Submitted to the

Subcommittee on Coast Guard and Navigation

Committee on Merchant Marine and Fisheries

U.S. House of Representatives

Re: "Maritime Regulatory Reform Act of 1994"

1334 Longworth House Office Building

Washington, DC 20515

August 11, 1994

On behalf of the Shipbuilders Council America, the national trade association representing the private sector shipbuilders, ship repairers, marine equipment manufacturers and naval architects of the United States, I appreciate the opportunity to submit the following statement with respect to the proposed legislation that is entitled the "Maritime Regulatory Reform Act of 1994." A list of the members of the Council is attached.

Our industry is very supportive of legislation and implementing regulations that are the product of a detailed cost benefit analysis, and that are consistent with the best interests of the health and safety of employees and the environment. In short, we applaud initiatives that foster the general concept of regulatory reform. However, we believe that this Bill, as presently drafted, would be inconsistent with the best interests of all components within the maritime industry.

Our major concern with the current language in the Bill is that it could have the effect of circumventing the intent of Congress to protect the coastal and inland waterways and shorelines of the United States from oil pollution. In this regard, the Oil Pollution Act (OPA) established more stringent standards for controlling oil pollution than have been established by any other nation -- a standard that is more stringent than that which has been adopted by the International Maritime Organization (IMO) International Code for Safe Operation of Ships and Pollution Prevention. Understandably, shipowners and operators have a justified and vested interest in attempting to reduce their operating costs and liability exposure, and this could occur if this proposed legislation would permit IMO standards to replace OPA standards. In short, the net effect of Section 2 of the Bill could be that the Coast Guard would be required to issue regulations that would, in essence, substitute less stringent standards in lieu of OPA standards for oil pollution control.

An example of the potential consequences of such a substitution of standards is that the IMO acceptance of mid-deck tankers could undermine U.S. law which requires that only the safest design, i.e., double hulled ships, be permitted to call in U.S. waters.

Another significant concern with the present language in Section 5 of the Bill is that it would apparently reduce the frequency of inspections from 2 years to 5 years. This would mean that older tankers, which are more susceptible to oil spills, could go for up to 5 years without being inspected, thereby increasing rather than reducing the risk of oil spills. A collateral concern is also raised in the Section by Section Analysis which suggests that "self inspection" could be permitted as an "alternative compliance option." Yet another concern is that the current language could be interpreted to permit regulatory waivers to the IMO requirements, which already are less stringent than OPA requirements.

We steadfastly support the goal of regulatory reform, and if the proposed legislation were modified to accommodate the concerns we have raised, we would support this proposed legislation, and any other legislation that will improve the competitiveness of "all" components within the maritime industry. Thus, while we are unable to support this legislation as it is presently drafted, we stand ready to support modifications that will continue to protect the environment and create a fleet of safe, well maintained ships sailing the world's oceans.

I appreciate this opportunity to present our comments.

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